



**NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
REQUEST FOR PROPOSALS  
NYSDOT STATE SAFETY OVERSIGHT  
PROGRAM FOR RAIL TRANSIT AGENCIES  
Contract #C038057**

Initial Information for Submittal

- A. Please note the following **Dates and Deadlines**:
- a. **April 11, 2022**: RFP Release Date
  - b. **April 18, 2022**: Deadline for questions about the RFP at 12:00 PM (EST)
  - c. **April 25, 2022**: Questions/Answers about the RFP released by COB
  - d. **May 23, 2022**: Deadline for the submission of proposals at 12:00 PM (EST)
  - e. **End of May/Beginning of June 2022**: Evaluations
  - f. **Mid-June 2022**: Technical Interviews
  - g. **July/August 2022**: Approximate Recommendation & Designation
  - h. **August/September 2022**: Contract Finalizing
  - i. **January/February 2023**: Approximate Contract Award
- B. Complete Proposals are to be submitted to the Designated Contact stipulated in Section 1.4.



NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
RFP RESPONSE FORM

Contract No. C038057  
NYSDOT STATE SAFETY OVERSIGHT PROGRAM  
FOR RAIL TRANSIT AGENCIES

Please review this RFP, complete the following information, and email to the NYSDOT Designated Contact at the email address below, by the earliest date practical.

\_\_\_ We **DO** intend to submit a Proposal

\_\_\_ We **DO NOT** intend to submit a Proposal for the following reasons:

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Proposer Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Typed Name and Title:  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please email the completed form to [Shalina.Mallory@dot.ny.gov](mailto:Shalina.Mallory@dot.ny.gov).

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**CONSULTANT TECHNICAL AND MANAGEMENT PROPOSAL/SUBMITTAL  
SUBMISSION CHECKLIST**

**Part I – Technical and Management Proposal/Submittal**

<input type="checkbox"/>	Submit 1 (one) complete electronic copy of the Part I – Technical and Management Proposal/Submittal via email to the designated contact provided in Section 1.4 Designated Contact.
<input type="checkbox"/>	Signed Cover Letter on official business letterhead
<input type="checkbox"/>	Table of Contents identifying each major section and page numbers
<input type="checkbox"/>	Narrative Description
<input type="checkbox"/>	Experience
<input type="checkbox"/>	Approach, Scope of Services and Schedule
<input type="checkbox"/>	Organization and Staffing
<input type="checkbox"/>	Complete and Submit Attachment #15: Key Personnel Reference Form

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**CONSULTANT COST AND ADMINISTRATIVE PROPOSAL/SUBMITTAL  
SUBMISSION CHECKLIST**

**Part II – Cost and Administrative Proposal/Submittal**

<input type="checkbox"/>	Submit 1 (one) complete electronic copy of Part II: Cost and Administrative Proposal/Submittal via email to the designated contact provided in Section 1.4 Designated Contact.
<input type="checkbox"/>	Required Cost Proposal in Excel Format– Attachment #18
<input type="checkbox"/>	Complete and submit online certification or hard copy of Vendor Responsibility Questionnaire
<input type="checkbox"/>	Complete and submit Attachment #2: Consultant Information and Certification Form
<input type="checkbox"/>	Complete and submit Attachment #3: Form AOR Acknowledgement of Receipt
<input type="checkbox"/>	Complete and submit Attachment #4: Procurement Lobbying Law Forms
<input type="checkbox"/>	Complete and submit Attachment #6: Non-Collusive Bidding Certification
<input type="checkbox"/>	Complete and submit Attachment #7: Vendor Assurance of No Conflict of Interest or Detrimental Effect
<input type="checkbox"/>	Complete and submit Attachment #8: Executive Order 177 Certification
<input type="checkbox"/>	Complete and submit Attachment #9: Executive Order No. 14 and Executive Order No. 16 Certification
<input type="checkbox"/>	Complete and submit Attachment #10: DBE Participation Information Form
<input type="checkbox"/>	Complete and submit Attachment #10a: DBE Subconsultant Participation Solicitation Log
<input type="checkbox"/>	Complete and submit Attachment #22: List of Past & Current Contracts

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**1. Introduction**

**1.1 Purpose**

New York State Department of Transportation's (NYSDOT) Public Transportation Safety Board (PTSB) is issuing a Request for Proposal (RFP) to competitively select one qualified and responsible Consultant team. The selected Consultant shall provide administrative services, technical assistance, and oversight activities for the State Safety Oversight (SSO) program. This program shall be in accordance with regulations issued by the Federal Transit Administration (FTA) in 49 CFR Part 674 and issued under Section 5329 of the Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21) and all new requirements established under the 2021 Infrastructure and Jobs Act.

The selected Consultant shall provide assistance and subject matter expertise to the New York State PTSB State Safety Oversight Program. The Consultant shall have thorough knowledge of 49 CFR Part 672, 673, and 674. In addition to Federal regulations, the Consultant shall have a thorough understanding of New York State regulations pertaining to passenger rail in particular NYCRR 17 §990. The Consultant shall provide assistance and ensure the availability of subject matter experts in the disciplines required by the nature of the RTA projects in order to provide oversight to ensure the safety certification process is being followed. The Consultant shall provide expertise to meet the requirements of the Infrastructure Investment Jobs Act. This includes the special directive once it has been developed and defined by the FTA.

**1.2 Background**

The New York State Department of Transportation (NYSDOT) conducts and staffs an advisory organization known as the Public Transportation Safety Board (PTSB) which was established in 1984. Under statute, PTSB is responsible for the safety oversight of all public transportation systems operating in New York State that receive State Transportation Operating Assistance. The PTSB is the designated State Safety Oversight Agency pursuant to regulations issued by the FTA in 49 CFR Part 674. The PTSB oversees the heavy rail system operated by the MTA New York City Transit (NYCT) and the light rail system operated by the Niagara Frontier Transportation Authority (NFTA). For purposes of this RFP, PTSB and SSOA will be interchangeable. In addition to the properties that fall under FTA purview, PTSB oversees commuter rail operated by MTA Long Island Railroad and MTA Metro North Railroad. These two railroads are under Federal Railroad Administration regulation. PTSB staff is supported by staff in the NYSDOT Main Office in Albany, New York and the Region 11 office located in Long Island City Queens, New York.

In 2019, PTSB received certification from the Federal Transit Administration. The PTSB SSO program was certified by the FTA with a workload assessment of 12.6 Full-Time Equivalents (FTEs). Based upon current staffing, PTSB provides 7.6 FTEs. **Accordingly, the Consultant**



shall at a minimum, be able to provide 5 FTEs with the ability to surge the level of effort as needed to assist PTSB in maintaining a proper level of effort.

### **1.3 Minimum RFP Responsiveness**

Any Proposer that does not provide **ALL** the following **by the Proposal Submission Deadline** will be determined to be non-responsive and will be removed from further consideration (prior to the technical evaluation of Proposals).

1. Part I: Technical and Management Proposal/Submittal
  - Attachment 15: Key Personnel Reference Forms
2. Part II: Cost and Administrative Proposal/Submittal
  - Complete and submit online certification or hard copy of Vendor Responsibility Questionnaire
  - Attachment 2: Consultant Information and Certification Form
  - Attachment 3: Form AOR Acknowledgement of Receipt
  - Attachment 4: Procurement Lobbying Law Forms
  - Attachment 6: Non-Collusive Bidding Certification
  - Attachment 7: Vendor Assurance of No Conflict of Interest or Detrimental Effect
  - Attachment 8: Executive Order 177 Certification
  - Attachment 9: Executive Order No. 14 and Executive Order #16 Certification
  - Attachment 10: DBE Participation Information Form
  - Attachment 10a: DBE Subconsultant Participation Solicitation Log AND Goal Attainment Letter
  - Attachment 18: Cost Proposal
  - Attachment 22: List of Past & Current Contracts

### **1.4 Designated Contact**

Potential responders are advised that under New York State Finance Law Section 139-j, communication on procurements can be made only to designated contact persons. The Department's Designated Contact for this Procurement is:

Primary Contact:

Shalina L. Mallory  
New York State Department of Transportation  
Office of Contract Management  
50 Wolf Rd, 6<sup>th</sup> Floor  
Albany, NY 12232  
(518) 457-9101  
Email: [shalina.mallory@dot.ny.gov](mailto:shalina.mallory@dot.ny.gov)

Secondary Contact:

Patricia Kappeller  
New York State Department of Transportation  
Office of Contract Management  
50 Wolf Rd, 6<sup>th</sup> Floor  
Albany, NY 12232  
(518) 457-2600

Email: [patricia.kappeller@dot.ny.gov](mailto:patricia.kappeller@dot.ny.gov)

The above-named persons, as the Department's Designated Contacts shall be the Department's only points of contact and sources of information for this procurement.

### **1.5 RFP Modifications**

If necessary, NYSDOT will issue Modifications to modify conditions or requirements of this RFP. Proposers are advised to visit the NYSDOT website: (<https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities>) regularly to check for Modifications. The final Modification will be posted on NYSDOT's website not later than seven (7) calendar days prior to the Proposal Due Date. If an additional Modification is required within the seven (7) calendar days, the Proposal Due Date shall be revised such that there will be seven (7) calendar days from the final Modification to the Proposal Due Date.

## 2 Civil Rights Requirements

### 2.1 Disadvantaged Business Enterprise Participation Requirements

While not indicative of a Proposer's individual merit (technical excellence, Proposer's ability, experience, etc.), NYSDOT encourages the participation of certified Disadvantaged Business Enterprises (DBEs) in its solicitations. The level of DBE participation will be relevant to the process of selecting Proposals that will achieve the overall goals of the Department. Please visit the New York Certification Program (NYSUCP) DBE Directory for certified Disadvantaged Business Enterprises via <https://nysucp.newnycontracts.com>.

For this specific procurement, NYSDOT has established a DBE participation goal of six percent (6%). Meaningful participation by either a prime consultant **who is certified as a NYSUCP DBE** or inclusion of subconsultant(s) **who is/are certified as a NYSUCP DBE** count towards the DBE participation goal. Meaningful participation is defined as providing commercially useful functions or services. These services should:

- Result in a product or service distinguishable from the Prime Consultant's product or service or be a part of the services provided by the Prime Consultant;
- Be for scope of service elements which can be and are completely performed, supervised, and managed by the DBE consultant; and/or
- Perform significant tasks which can be considered commercially marketable.

Interested Proposers should verify their attainment of the above established DBE participation goal by completing **Attachment 10: DBE Participation Information and submitting proof of DBE Certification**. To count towards the Department's DBE goal, a firm offering DBE participation must be currently certified by the NYSUCP DBE Directory. If the Proposal does not meet the 6 percent DBE participation goal, the firm must provide evidence of a good faith effort by completing **Attachment 10a: DBE Subconsultant Participation Solicitation Log**. **Additionally, if the Proposer does not meet the specified goal**, the Proposer must provide a **Goal Attainment Explanation Letter** explaining why the Proposer was unable to meet the DBE participation goal (in full or if partially), which serves to substantiate the Proposer's good faith effort. The letter should include sufficient justification as to why the goal was not met or was met partially and should, at a minimum, address the following factors: the Proposer's method of accomplishing the work, the subcontracting opportunities associated with the proposed approach and scope of services, the availability of certified firms for the work to be performed by either a prime consultant or via subcontract.

The above forms and letter must be included in Part II: Cost and Administrative Proposal/Submittal. Firms are advised to refer to Section 5.2 for the procedure by which NYSDOT will follow in evaluating a firm's proposed DBE participation.

### 2.2 Minority and Women-Owned Business Enterprise and Service-Disabled Veteran-Owned Business Enterprise Participation Requirements

Not Applicable

### 2.3 Diversity Practices

### 2.4 Title VI Assurance

The New York State Department of Transportation (NYSDOT), in accordance with Title VI of the Civil Rights Act of 1954, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation and Title 23, Code of Federal Regulations, Part 200, Title VI Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond to a written solicitation, request for proposal, or invitation for bid, that it will affirmatively insure that in any contract entered unto pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for award.

## **2.5 Equal Employment Opportunity**

In accordance with New York State Executive Order 162, issued on January 9, 2017, the Consultant shall provide workforce utilization reports in accordance with RFP Attachment 1, Draft Contract.

### **3 Project and Contract Objectives**

#### **3.1 Project Objectives**

The Objective of this project is to assist PTSB to administer the State Safety Oversight program in order to meet the requirements under Title 49 CFR Part 674, associated Federal rules and regulations and NYCRR 17 §990.

The selected Consultant team shall at a minimum, assist PTSB by providing subject matter expertise to conduct audits, develop and write reports, maintain the State Safety Oversight program standard, conduct and review hazard and accident investigations, conduct on-site risk monitoring activities, and conduct meetings with the RTA's. The detailed tasks are as follows:

Task 1 - State Safety Oversight Program Standard (SSOPS) Management

Task 2 - Triennial Audits for RTA's

Task 3 – Annual Reporting Requirements

Task 4 – Safety Risk Monitoring & Accident Investigation

Task 5 – Supporting Safety Activities

#### **3.2 Contract Objectives**

Consulting Arrangements: To hire one responsive, responsible, experienced, knowledgeable and qualified Prime Consultant under Contract #C038057. NYSDOT will accept a team of consultants wherein the contract will be with the Prime Consultant. Sub-consulting and teaming arrangements are encouraged; however, if a contractor, sub-contractor, and/or sub-consultant does not comply with 5.2.2.6(a) at the time of proposal, a conflict of interest is present. The State shall not issue a preliminary award to any proposer if such conflict of interest is present under section 5.2.2.6(a) at the time of proposal, or during any contract performance as proposed at the time of proposal.

2. For all offerors to accept the RFP's Draft Contract Terms and Conditions (Attachment 1) as is.

3. 6% DBE Participation Goal: Via this solicitation, the awarded contract shall meet or exceed the 6% DBE sub-consultant participation goal; to provide a utilization opportunity for certified DBE firms to participate in this contract (see RFP Section 2.3 above).

4. Contract Term: The base term of the contract will be three years with two optional one-year extensions.

5. Method of Payment: Fully loaded specific hourly rate reimbursement method plus reimbursement for pre-approved reasonable, acceptable expenses. All travel requires pre-approval by the NYSDOT Project Manager in order to receive reimbursement. Consultant will be paid monthly based on submitted, acceptable monthly reports.

6. Best Value Selection: To select the Best Value offered to NYSDOT from the responsive and responsible firms which respond to this RFP and compete for contract award.

7. Fair and Equitable treatment of all firms participating in the competitive consultant selection process.

8. Expected Contract Start Date: March 1, 2023.

### 3.3 Definitions and Acronyms

#### DEFINITIONS

Accident	An event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision involving a rail transit vehicle; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause.
Accountable Executive	A single, identifiable individual who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a public transportation agency; responsibility for carrying out the agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.
CAP	Corrective Action Plan: A plan developed by a Rail Transit Agency that describes the actions the Rail Transit Agency will take to minimize, control, correct, or eliminate risks and hazards, and the schedule for taking those actions. Either a State Safety Oversight Agency or FTA may require a Rail Transit Agency to develop and carry out a corrective action plan.
Consultant (Sub-Consultant)	An entity that performs tasks on behalf of FTA, a State Safety Oversight Agency, or a Rail Transit Agency, through contract or other agreement.
CWP	Certification Work Plan: the document submitted by States to the Federal Transit Administration detailing specific actions, steps, and timelines the State will to take achieve compliance with MAP-21 and 49 CFR Part 674.
Emergency	A condition, situation or occurrence of a serious nature, developing suddenly and unexpectedly, and requiring immediate action.
Evacuation	Organized, phased, and supervised withdrawal, dispersal, or removal of civilians from dangerous or potentially dangerous areas, and their reception and care in safe areas.
Hazard	Any real or potential condition (as defined in the rail transit agency's hazard management process) that can cause injury, illness, or death; damage to or loss of a system, equipment or property; or damage to the environment.
IIJA	Infrastructure Investment and Jobs Act (also known as the Bipartisan Infrastructure Bill)
Incident	An event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a rail transit agency.

Investigation	The process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.
Mitigation	The activities designed to reduce or eliminate risks to persons or property or to lessen the actual or potential effects or consequences of an incident. Mitigation measures may be implemented prior to, during, or after an incident. Mitigation measures are often informed by lessons learned from prior incidents. Mitigation involves ongoing actions to reduce exposure to, probability of, or potential loss from hazards.
New Starts Project	Any Rail Fixed Guideway System funded under FTA's 49 U.S.C. 5309 discretionary construction program.
Occurrence	An event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a rail transit agency.
Person	A passenger, employee, Contractor (Consultant), pedestrian, trespasser, or any individual on the property of a Rail Fixed Guideway Public Transportation System.
PTASP	Public Transportation Agency Safety Plan means the comprehensive agency safety plan for a transit agency, including a Rail Transit Agency, that is required by 49 U.S.C. 5329(d) and based on a Safety Management System.
RFGPTS	Rail Fixed Guideway Public Transportation System means any Fixed Guideway system that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration, or any such system in engineering or construction.
Risk	The composite of predicted severity and likelihood of the potential effect of a hazard.
Risk Mitigation	A method or methods to eliminate or reduce the effects of hazards.
RTA	Rail Transit Agency means any entity that provides services on a rail Fixed Guideway Public Transportation System.
RWP	Roadway worker protection
Safety Risk Management	A process within a Rail Transit Agency's Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.
Serious Injury	Any injury which: (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received; (2) Results in a fracture of any bone (except simple fractures of fingers, toes, or nose); (3) Causes severe hemorrhages, nerve, muscle, or tendon damage; (4) Involves any internal organ; or (5) Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.
SMS	Safety Management Systems, A formal, top-down, organization-wide data-driven approach to managing safety risk and assuring the effectiveness of a

	recipient's safety risk mitigations. SMS includes systematic procedures, practices and policies for managing risks and hazards.
SSOA	State Safety Oversight Agency means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and the regulations set forth in this part.
TAM	Transit Asset Management, The strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risk, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation, as required by 49 U.S.C. 5326 and 49 CFR Part 625.
TTP	Technical Training Plan, training focused on each of the New York RTAs. The TTP also addresses access to any rail expertise needed by the PTSB SSO Program to complete investigations, inspections, examinations, and/or audits at the New York RTAs.
Vehicle	Any rolling stock used on a Rail Fixed Guideway Public Transportation System, including but not limited to passenger and maintenance vehicles.

### **ACYRONYMS**

APTA	American Public Transportation Association
ATC	Automatic Train Control
CBTC	Communication based train control
CFR	Code of Federal Regulations
FAST Act	Fixing America's Surface Transportation Act
FRA	Federal Railroad Administration
FTA	Federal Transportation Administration
IJA	Infrastructure Investment and Jobs Act (also known as the Bipartisan Infrastructure Bill)
MAP-21	Moving Ahead for Progress in the 21 <sup>st</sup> Century
MPO	Metropolitan planning organization
NFTA	Niagara Frontier Transportation Authority
NPRM	Notice of proposed rule making
NTD	National Transit Database
NTSB	National Transportation Safety Board
NYCT	MTA New York City Transit
NYSDOT	New York State Department of Transportation
PTSB	Public Transportation Safety Board
RWP	Roadway worker protection
SOP	Standard Operating Procedures
SSO	State safety oversight
SSOP	State Safety Oversight Program
SSP	System Security Plan



SSOPS	State Safety Oversight Program Standard
TSI	Transportation Safety Institute
TSSP	Transportation Safety and Security Program

### 3.4 Contract Term and Rate Adjustments

NYDOT estimates that the work for the successful consultant will commence on **March 1, 2023**. The base term or duration of the contract is three (3) years. The contract may be extended for up to two (2) one-year periods upon written agreement of both parties and approval of the Office of the State Comptroller and FHWA.

If the contract is extended for the optional years, the Producer Price Index (PPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 2%, whichever is lower, will be used as a basis for adjusting the hourly rates/lump-sum deliverable amounts. The rate adjustment will be effective March 1, 2026 and is calculated using the previous November index, using Series ID PCU5413—5413—(Architectural, engineering and related services: [http://data.bls.gov/timeseries/PCU5413--5413--?data\\_tool-XGtable](http://data.bls.gov/timeseries/PCU5413--5413--?data_tool-XGtable)). If at any time the above Index Series ID is discontinued or becomes unavailable, the State reserves the right to implement a comparable Index.

An example of the rate adjustment calculation is as follows (all numbers and titles used are form illustrative purposes only):

Staff Title 1/1/2022-12/31/2022 Billing Rate	\$9.00/hour
October 2022 PPI Index (PCU5413—5413--)	132.1
October 2021 PPI Index (PCU5413—5413--)	130.0
Index Point Change	2.1
Divided by Previous Index	130.0
Percent Change, rounded to the nearest tenth	1.6%
Staff Title 1/1/2023-12/31/2024 Billing Rate	\$9.14/hour

If the actual start date of the contract is substantially different than the above estimated date, then the effective date for the rate adjustment will be similarly changed.

NYSDOT reserves the right to negotiate a lower rate adjustment than stated above for the two (2) additional one-year extensions.

## **4 Scope of Services**

### **4.1 Project Overview**

The New York State Department of Transportation (NYSDOT) staffs an advisory organization known as the Public Transportation Safety Board (PTSB). The PTSB is the designated State Safety Oversight Agency pursuant to regulations codified by the Federal Transit Administration through 49 CFR Part 674 and issued under Section 5329 of the Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21). PTSB oversees the heavy rail system operated by the MTA New York City Transit (NYCT) and the light rail system operated by the Niagara Frontier Transportation Authority (NFTA). In 2019, PTSB received certification from the Federal Transit Administration. The Consultant shall assist the PTSB to continue to meet SSO requirements under Part 674 and state regulations that meet the requirements for State Safety Oversight under MAP-21.

### **4.2 Tasks**

#### **GENERAL CONDITIONS:**

The selected Consultant shall provide assistance and subject matter expertise to the New York State PTSB State Safety Oversight Program and maintain training to be current and meet FTA requirements. The Consultant shall have thorough knowledge of 49 CFR Part 670, 672, 673, and 674 and the requirements developed under the 2021 Infrastructure Investment and Jobs Act, particularly the FTA special directive once developed. In addition to Federal regulations, the Consultant shall have a thorough understanding of New York State regulations pertaining to passenger rail in particular NYCRR 17 §990.

The Consultant shall provide assistance and ensure the availability of subject matter experts in the disciplines required by the nature of RTA capital projects in order to provide oversight to ensure the safety certification process is being followed.

The PTB SSO program was certified by the FTA with a workload assessment of 12.6 Full-Time Equivalents (FTEs). Based upon current staffing, PTSB provides 7.6 FTEs. The consultant is required to provide a minimum of 5 FTEs, with the ability to increase the number of FTE's to assist PTSB in maintaining a proper level of effort at any time to address the tasks under this contract.

The selected Consultant team shall at a minimum, assist PTSB by providing subject matter expertise to conduct audits, develop and write reports, maintain the State Safety Oversight program standard, conduct and review hazard and accident investigations, conduct on-site risk monitoring activities, and conduct meetings with the RTA's. The detailed tasks are as follows:

- Task 1 - State Safety Oversight Program Standard (SSOPS) Management
- Task 2 - Triennial Audits for RTA's
- Task 3 – Annual Reporting Requirements
- Task 4 – Safety Risk Monitoring & Accident Investigation
- Task 5 – Supporting Safety Activities

A detailed description of each task can be found in **Attachment 17: Scope of Services Detailed Task Descriptions.**

#### **4.3 Organization and Staffing**

The qualifications and prior experience of the Proposer are of great importance to NYSDOT. The Proposer will create an organization chart that describes the reporting relationships of all key personnel identified in **Attachment 16: Contract Job Titles, Duties, and Qualifications**.

#### **4.4 Deliverables**

All task specific deliverables are defined in **Attachment 17: Scope of Services Detailed Task Descriptions**. All records/reports must be in Microsoft Word, Excel, Adobe PDF or another format acceptable to NYSDOT. Documents must be available when requested by NYSDOT or automatically shared with NYSDOT in electronic format via email or managed file transfer (for larger sized documents). Should NYSDOT want to review records pertaining to this contract at the Consultant's office, NYSDOT shall be given access to those files upon reasonable notice.

The Consultant shall maintain all records at a location accessible by NYSDOT staff and in an electronic format acceptable to NYSDOT. Per the contract, all records produced under this contract are property of NYSDOT. Should the work between NYSDOT and the Consultant be terminated, all records shall be turned over to NYSDOT or its designated recipient.

## 5 Proposal Content and Format

For the purposes of evaluation, each Proposal must be submitted in two (2) parts, bound separately. Part I shall consist of the Technical and Management Proposal/Submittal. Part II shall consist of the Cost and Administrative Submittal/Proposal. Each part of the Proposal must be complete in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management Proposal/Submittal can be evaluated strictly on the basis of merit. **Cost information must not be included in the Part I: Technical and Management Proposal/Submittal.** The Proposal should follow the format listed below.

**Note:** NYSDOT will protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law. If an offerer believes information included in their Proposal is confidential and proprietary, they should identify those pages of their Proposal which contain such information as “Confidential and Proprietary”. Additionally, offerers need to explain the reason(s) why this information should be considered exempt from public disclosure under FOIL. This information is to be provided in the Cover Letter.

**Note:** *Cost information is **NOT** to be included in Part I: Technical and Management Proposal/Submittal. Technical information is **NOT** to be included in Part II: Cost and Administrative Proposal/Submittal.*

### 5.1 Technical and Management Proposal/Submittal

Part I shall include the following sections:

1. Cover Letter and Title Page, indicating:  
Name, address and phone number of the Proposer, and the name, title, address, email and telephone number of the person(s) with authority to negotiate and who may be contacted during the procurement process. Provide a brief description of the proposed approach, work effort, and resulting product. Confidential and proprietary information should also be identified and addressed in this section. Not to exceed one (1) double sided page each.
2. Table of Contents
3. Narrative Description  
Provide a brief description of the important issues involved in the implementation of this effort. Include enough substantive details to demonstrate an understanding of NYSDOT project objectives and familiarity with applicable laws, rules, etc.
4. Experience  
The qualifications and prior experience of the proposer are of great importance to NYSDOT. Direct or prior experience in State Safety Oversight of legacy rail transit agencies is required. Prior experience in State Safety Oversight of New York City Transit is highly desirable. Provide a list of projects currently in progress and those completed within the last three years which are relevant to this effort (up to five years is allowable if relevant).

The Consultant shall be knowledgeable of the Technical Training requirements under Part 672. The proposer is required to demonstrate that all personnel who will be working on this NYSDOT contract have successfully completed or are in the process of completing the core courses (based on course offerings). This excludes administrative staff that are not directly involved in State Safety Oversight activities.

As a result of the 2021 IIJA passing, the Consultant shall provide qualified personnel to meet the special directive once it is issued.

The successful consultant must provide copies of completed course work and a schedule of course work to be completed pursuant to the certification requirements under the Public Transportation Safety Certification Training Program (PTSCTP). Such evidence of schedule may include a Technical Training Plan (TTP), Individual Training Plan (ITP), Transit Safety and Security Program Certificate for the Transit Rail Program (TSSP-Rail), or a Transportation Safety Institute Transcript.

Provide Consultant Key Personnel Resume and Reference form in Attachment 15. Include names, addresses, e-mail and phone numbers of contact points with the listed clients. There may be up to 3 levels for each title (example: Principal Analyst 1, 2, and 3). NYSDOT reserves the right to request information from any source so named as well as contact additional relevant references.

List each individual's relevant qualifications; availability for the term of the contract; familiarity with and understanding of FTA and NYSDOT programs, policies and procedures; list previous relevant experience on similar projects. In addition, the proposal must clearly identify each individual assigned to this project, including those working for any sub-consultants. Experience that is not directly related or comparable to the RFP's objectives and/or Scope of Services will not be evaluated.

The Key Personnel (as identified in Attachment 15) proposed by the Consultant are an important factor in the evaluation of its proposal. Thus, the Department expects that the personnel proposed will be available at the start of the contract term. If at any time during the contract term a key personnel position must be replaced, the new personnel must be qualified and have at least the same qualifications as the person being replaced. The replacement must first be approved by NYSDOT. The determination that a Candidate is "qualified" is the sole decision of NYSDOT. A requirement of the winning proposer must be having qualified substitutes ready if a key personnel position must be replaced. There must not be a diminution of service if any key personnel are being replaced.

The Key Personnel (as identified in Attachment 16: Contract Job Titles, Duties and Qualifications) proposed by the Proposer are an important factor in the evaluation of the Proposal. Thus, NYSDOT expects that the personnel proposed will be available at the start of the contract term.

## 5. Approach, Scope of Services and Schedule

Describe the approach for performing the work and accomplishing project objectives. A detailed scope of services is provided in **Attachment 17: Scope of Services Detailed Task Descriptions**. Base the approach on these tasks or suggest alternative tasks which could improve the ability of the project to meet its objectives. NYSDOT wants to allow flexibility for the inclusion and consideration of ideas, initiative and creativity of the Proposer. Alternative tasks and suggestions are encouraged and will be reviewed with interest within the framework of the stated objectives and scope of services for the project. Fully explain and justify the proposed approach if it significantly departs from the general scope of services. Also, include a schedule for completion of the project showing the duration of each task and all major milestones, and include a list of technical assumptions.

6. Organization and Staffing

Provide an organization chart for the project showing the names of the Proposer's Key Personnel. If subconsultant's are to be used, explain the specific need for the expertise and describe the arrangements. Describe the plan for phasing project personnel into the effort. The Consultant Project Manager shall serve as the primary contact with the NYSDOT Project Manager and is responsible for the performance of all key personnel, production staff, and support staff assigned to the contract, as well as contractual matters on the Consultant's side.

## 5.2 Cost and Administrative Proposal/Submittal

Part II shall consist of the Cost and Administrative Proposal/Submittal

1. Cover Letter and Title Page

Name, address and phone number of the Proposer, and the name, title, address, email and telephone number of the person(s) with authority to negotiate and who may be contacted during the procurement process. Confidential and proprietary information should also be identified and addressed in this section. Not to exceed one (1) double sided page each.

2. Cost Proposal Section

NYSDOT requires that all cost information be presented using the RFP-provided Microsoft Excel Workbook (See Attachment 18: Cost Proposal Workbook) in both hard copy and electronic copy on flash drive. The accuracy of the information entered into the Cost Proposal Workbook is the sole responsibility of the Proposer. When completing the Cost Proposal Workbook, Proposers shall follow these instructions:

- a. The one-time and recurring costs the Proposer provides within the Cost Proposal Workbook shall include ANY and ALL one-time and recurring fees, charges or costs for the duration of the contract, including, but not limited to:
  - i. All direct and indirect costs, all overhead, fees and profit
  - ii. Labor, parts, shipping, material and equipment costs
  - iii. Software licensing
  - iv. Emergency Work
  - v. Maintenance services as specified herein
  - vi. Repairs and replacements of major or minor parts as necessary
  - vii. Administrative, reporting or other requirements

- viii. Travel costs, parking fees, and any other ancillary fees including permits, licenses, insurance, etc.
- ix. Services not explicitly stated in this solicitation, but necessarily attendant thereto as applicable to the associated item for which the rate/fee is being quoted.
- b. Terminology used in the Cost Proposal Workbook for products and services must be consistent with the terminology used in Part I: Technical and Management Proposal/Submittal.
- c. All worksheets included in Attachment 18: Cost Proposal Workbook must be completed in order for the response to be considered complete and responsive.
- d. Proposers shall only make entries in the colored cells. Changes should not be made to the Cost Proposal Workbook format or formulas. **Proposers shall not attach any additional or qualifying information unless specifically instructed to do so.**
- e. Salaries:  
Complete the salary schedule for all contract job titles proposed and their proposed base hourly rates. Enter any additional titles, if applicable, and their proposed base hourly rates. A separate salary schedule shall be completed for the Prime Consultant and any proposed subconsultants. Enter the Indirect Cost Rate (Overhead) and the Fixed Fee (Profit) for the Prime Consultant and any proposed subconsultants.

If proposing a fully loaded rate the calculation is:

A = Direct Labor

B = Overhead Cost = Overhead Rate \* Direct Labor

C = Fixed Fee = Fixed Fee % \* (A+B)

Standard Hourly rate (SHR) = Fully Loaded Rate

SHR = A + B + C

- f. Direct Non-Salaries  
A direct non-salary cost schedule shall list the items of direct non-salary costs (out-of-pocket expenses) expected to be incurred in the performance of the project for the Prime Consultant and any proposed subconsultants. Travel, meals, and lodging reimbursements shall be limited to the prevailing maximum rates established by the State Comptroller. The latest state and nationwide rates are available at the following website:

<http://www.gsa.gov>

### 3. Administrative Section

- a. Vendor Responsibility  
In accordance with the NYS Finance Law, NYSDOT will only make contract award to vendors that are determined to be responsive and responsible. All Proposers of contracts valued at \$100,000 or more, and subconsultants with services valued at \$100,000 or more shall be required to submit a Vendor Responsibility Questionnaire through the office of the State Comptroller at:  
<http://www.osc.state.ny.us/vendrep/index.htm> and include a copy of the online certification, or include a hard copy of the completed Vendor Responsibility Questionnaire.
- b. Acceptance of Contract Terms and Conditions

Proposers shall complete and submit Attachment 2: Consultant Information and Certification Forms, to indicate their acceptance of all terms and conditions contained in Attachment 1: Draft Contract. Attachment 2 requires the signatures of an official authorized to bind the Proposer to all provisions, a statement certifying that the Proposal shall remain valid for 365 days, a statement that the Proposer accepts the RFP's Scope of Services "as-is", and a statement, that if awarded the contract, the Proposer will comply with all requirements of the RFP, including all attachments. Altering this form without the prior written approval of NYSDOT, is prohibited and may lead to the Proposal being deemed non-responsive and subsequently dismissed.

**No exceptions to any of the draft contract terms and conditions will be entertained by NYSDOT.** Conditional Proposals will be deemed non-responsive.

- c. Modification Acknowledgement Form  
Complete and submit Attachment 3: Acknowledgment of Receipt (AOR), indicating receipt of any Modifications and Q&A issued by NYSDOT.
- d. Procurement Lobbying Law (PLL)  
All Proposers should become familiar with NYSDOT's Procurement Lobbying Law Interim Guidelines and Procedures. The document is listed at:  
[https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll\\_gandp\\_v1.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll_gandp_v1.pdf)

Filing the two required PLL forms is mandatory for all consultants in order to be considered for contract award. These forms are:

Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j(3) and §139-j(6)(b)  
[https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers\\_affirmation\\_and\\_agreement\\_form.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers_affirmation_and_agreement_form.pdf)

Offerer Disclosure of Prior Non-Responsibility Determinations:  
[https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offer\\_disclos\\_prior\\_non.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offer_disclos_prior_non.pdf)

For additional information refer to Attachment 4: Procurement Lobbying Law Compliance.

- e. Non-Collusive Bidding Certification  
All Proposers shall complete and submit Attachment 6: Non-Collusive Bidding Certification.
- f. Vendor Assurance of No Conflict of Interest or Detrimental Effect  
All Prime Proposers and Subconsultants shall complete and submit Attachment 7: Vendor Assurance of No Conflict or Detrimental Effect.
- g. Civil Rights Participation  
Complete and submit Attachment 10: DBE Participation Information and proof of DBE Certification, and if applicable, Attachment 10a: DBE Subconsultant Participation Solicitation Log and Goal Attainment Letter. Provide the legal names of all Certified DBE consultants (Prime and/or subconsultants).



- h. New York Business Reporting  
Not Applicable
- i. Diversity Practice Questionnaire  
Not Applicable

4. No Conflict of Interest

For purposes of this contract, a contractor, sub-contractor, and/or sub-consultant may not concurrently provide services to both a State Safety Oversight Agency and a Rail Transit Agency (1) under the oversight of that State Safety Oversight Agency, and (2) not under the jurisdiction of the Federal Railroad Administration (FRA). The term “provide services” shall include any contract with an RFGPTS within the State of New York (Niagara Frontier, New York City Transit, and Staten Island Railroad). Accordingly, a contractor, sub-contractor, and/or sub-consultant may not maintain any contractual relationship with Niagara Frontier, New York City Transit, or Staten Island Railroad. Notwithstanding the foregoing, if a conflict of interest – which was not present, nor reasonably foreseeable, at the time of proposal – arises, such conflict of interest shall be governed by 49 CFR 674.41. If this clause contradicts any provision of Attachment 23, this clause shall take precedence.

Use Contract Number C038057 wherever requested in the forms. Per Procurement Lobbying Law of 2005 only the individuals identified as Designated Contacts in Section 1.4 of this RFP shall be contacted if you have any questions.

## **6 Criteria for Evaluation of Proposals**

### **6.1 General**

Proposals shall be pre-screened to determine if they meet the minimum RFP responsiveness, referenced in Section 1.3. Those which do not shall be deemed non-responsive and shall be removed from further consideration. As part of the pre-screening process, the proposed Civil Rights Participation percentages shall be reviewed. To count towards NYSDOT's participation goal, each firm must be currently listed in the NYSUCP Directory (DBE). If the proposed participation is less than the established goals(s), the Proposer's evidence of Good Faith Efforts (Subconsultant Participation Solicitation Log) along with a Goal Attainment Explanation Letter will be reviewed. During the review, which will include verification of a Proposer's Good Faith Effort evidence, if it is determined by NYSDOT that the Proposer did not provide an acceptable Good Faith Effort, then the Proposal will be deemed non-responsive and will be removed from further consideration.

Proposals shall then be evaluated by the Department using a Best Value Method evaluation process based on the technical and cost criteria described below. Technical considerations are of greater importance than pricing considerations, however, price is a significant factor in the Department's evaluation of Proposals. Technical Proposals will be scored based on the information provided under Section 5.1 in accordance with the pre-established criteria listed in Section 6.2. The cost portion of Section 5.2 will be point scored in accordance with the pre-established criteria listed in Section 6.3.

Technical and Management Proposal/Submittal evaluation will be accomplished by a representative committee comprised, as appropriate, of technical, program and management personnel. Committee members will score each Proposal individually and then meet as a group to discuss the Proposals. Evaluators will be allowed to revise scores on the basis of committee discussions. Only Proposals determined to be technically acceptable and subject for contract award will be considered further and have their Cost Proposal included in the selection process.

Proposers responding to this RFP may be requested to clarify issues or to provide additional insights into their Proposal through written clarifications and/or technical interviews/demonstrations. If written clarifications are required to complete the technical evaluation of Proposals, evaluators will be allowed to revise their technical scores based on this clarifying information. Furthermore, the Department reserves the right to ask clarifying questions regarding each Cost Proposal (included in Part II: Cost and Administrative Proposal/Submittal) and DBE participation as well.

The Department reserves the right to request best and final offers from firms that are determined to be susceptible to contract award.

### **6.2 Technical and Management**

The Technical and Management Proposal will be scored and will represent 70% of the total score for a Proposal. The major evaluation criteria are listed below:

The Technical Evaluation Committee shall use the following factors to guide evaluation of submitted technical proposals:.

1. Experience of Consultant and Key Personnel (Up to 30 Points)
  - Quality, extent and relevance of current and prior experience of the Consultant. (Up to 15 Points)
  - Quality, extent and relevance of experience, education and training of active key personnel. (Up to 10 Points)
  - Quality, extent and relevance of experience in State Safety Oversight of legacy rail transit agencies. (Up to 5 Points)
2. Quality of Proposal (Up to 15 Points)
  - Quality of Proposer's understanding of applicable federal and state requirements. (Up to 6 Points)
  - Quality, organization, and clarity of the Proposal including proposed scope of services; completeness of discussions, attention to detail and responsiveness to requirements. (Up to 5 Points)
  - Degree to which proposal reflects understanding and comprehension of project scope and objectives. (Up to 4 Points)
3. Approach, Scope of Services and Schedule (Up to 15 Points)
  - Degree to which the approach to the scope of services reflects an understanding, comprehension, and ability to fulfill project scope and deliverables. (Up to 6 Points)
  - Quality of the Consultant's resources relative to the needs of the project. (Up to 5 Points)
  - Quality of project organization; (Up to 4 Points)
4. Organization and Staffing (Up to 10 Points)
  - Quality of proposer's resources relative to the needs of the project. Quality of plan for phasing key personnel into project (Up to 4 Points)
  - Ability to manage the Project quality plan for interacting with NYSDOT and with sub-consultants including DBE sub-consultants (Up to 2 Points)
  - Ability of the Consultant to provide a level of effort commensurate to the task. (Up to 2 Points)
  - Ability of the Consultant to provide the SMEs needed for risk-based monitoring. (Up to 2 Points)

### **6.3 Cost**

The Cost portion of Part II: Cost and Administrative Proposal/Submittal will be point scored and will represent 20% of the total score for a Proposal. The calculation of a cost score will be based on the following method:

1. The Proposal with the lowest overall total price will receive the full amount of points.
2. Proposals with higher overall total prices will receive proportionately lower Cost Proposal scores.

3. This point total will be calculated by dividing the lowest proposed Cost Proposal price by the Cost Proposal price of each Proposal, multiplied by the maximum weight for the Cost Proposal (20%).
4. Cost Proposal scoring results shall be used to determine which Proposals are to be shortlisted and/or susceptible to contract award. A final Cost Proposal score shall be calculated once all Cost Proposal evaluations have been completed.

#### **6.4 Technical Interviews (Up to 10 points)**

Technical Interviews will be held at the Department's offices located in Albany, New York at a date and time to be determined by NYSDOT. The technical interviews will include clarifications, insight and questions about the written technical proposal as well as 4 pop-up questions. Responsiveness, understanding of the pop-up questions and team chemistry will be evaluated as follows:

1. Further insight and understanding of the consultant's proposed experience (firm and all key personnel); Clarity and quality of presentation; team chemistry. (up to 4 points)
2. Further insight and understanding of the consultant's proposed approach and scope of services; adequacy of the tasks/roles the Consultant will undertake as part of the project team to deliver contract; Key Personnel provided introductions and discussed their capabilities, experience/expertise, proposed project roles, and demonstrated knowledge of the proposal; (up to 4 points)
3. Responsiveness to questions and concerns raised by the TEC; ability to satisfactorily answer all TEC clarification questions; (up to 2 point)

#### **6.5 Written Technical Clarifications/Re-Score**

The Department reserves the right to seek written clarifications from firms submitting Proposals to assure a full understanding of their responsiveness to the technical requirements. A Proposer may be required to provide written clarifications at any time during the Proposal evaluation process. Evaluators will be allowed to revise their Technical Proposal scores based on receipt and consideration of this clarifying information and follow-up committee discussions. Reasons for any score change shall be documented.

#### **6.6 Proposal Shortlisting**

The shortlisting rule for this solicitation shall be: Any Proposer within 10 points of the top initial Best Value ranked Proposal will be shortlisted). Cost evaluation results shall be considered along with the initial weighted after-group discussion written Technical Proposal score results to determine the initial offered Best Value; which shall lead to an initial Best Value determined short listing of firms (determined to be mathematically susceptible to contract award).

Firms submitting Proposals which do not make the shortlist shall not be included in the remaining best value evaluation process steps (not included in subsequent Proposal scoring process). Such a firm's Proposal shall be classified as "Did Not Finish" in the procurement record.

#### **6.7 Best & Final Offer (BAFO)**

The Department reserves the right to request a Cost Only Best and Final Offers (BAFO) from firms which make the shortlist. Should the Department opt to request BAFOs, all shortlisted Proposers will receive a BAFO request. Responding Proposers will be allowed to submit a Cost Only BAFO, Proposers may opt to not submit a BAFO. The Department's Designated Representative shall make the necessary, appropriate adjustments to that Proposer's Cost Proposal evaluation.

#### **6.8 Proposal Withdrawal**

Should any firm withdraw their Proposal, the Department will remove that Proposals' technical and cost information from the Best Value evaluation documentation and shall recalculate the remaining Proposers' technical and cost scores (without the withdrawn Proposers' information).

#### **6.9 Final Best Value Determination**

After evaluation of all technical information submitted by competing Proposers (i.e., initial written Technical Proposals, Technical Interviews, written clarifications, and possible BAFOs), the Department add the weighted written technical proposal score and the perfected cost proposal score to arrive at the tentative final best value scores.

*Tie-Breaking Rule:* Should any of the tentative Final Best Value scores of one or more Proposals line within two (2) points of each other, then the State Finance Law Section §163(10)(a) shall be used to settle any ties.

Once all possible score ties have been cleared, the Department will determine the Proposal with the highest Final Best Value score and will recommend that Proposer to the Department's Executive Management for contract award.

#### **6.10 Consultant Selection Recommendation and Tentative Contract Award**

A Consultant selection and designation memo shall be prepared and forwarded to the applicable Department's Executive Manager(s) with an accompanying evaluation process results report. The memo shall recommend selection of the top-ranked Best Value Consultant for tentative Contract award. The Executive Manager(s) will be asked to concur with the final conclusion of the Proposal evaluation process and designate the Best Value Consultant based upon the results.

Should negotiations with the Best Value Consultant fail to produce an agreed upon contract(s), then the Department's Executive Management will designate tentative contract award to the next highest ranked Best Value Consultant. This process may repeat itself until acceptable contract(s) are consummated.

At the conclusion of the evaluation process, an announcement of the Department's designation(s) will be posted on the Department website. All Proposers shall be notified in writing regarding the results from the solicitation and will be offered an opportunity to hold a debriefing. Debriefing requests should be made to the Department's Designated Representative within 5 calendar days from the date of the designation notice. Further, it is expressly understood that this Request for Proposals does not commit the Department to

award a contract, pay any costs incurred in the preparation of a Proposal to this request, or to procure or contract any services or supplies. Further, the Department shall have no obligation or liability whatsoever to the Consultant selected as a result of this solicitation unless and until a contract satisfactory to the Department is approved and executed by the Consultant and all necessary State officials.

## 7 Administrative Specifications

### 7.5 Proposal Submission

The Proposal shall be signed by an official authorized to bind the Proposer.

Proposers shall submit 1 (one) complete electronic copy of the Part I – Technical and Management Proposal/Submittal and 1 (one) complete electronic copy of Part II – Cost and Administrative Proposal via email to the designated contact provided in Section 1.4 Designated Contact. Fax proposals will not be accepted.

All Proposals must be received by the Department by **12:00p.m. (EST) on May 23, 2022**.  
The Proposal must be addressed to:

Shalina L. Mallory

[Shalina.Mallory@dot.ny.gov](mailto:Shalina.Mallory@dot.ny.gov)

NYS Department of Transportation

Office of Contract Management

50 Wolf Rd, 6<sup>th</sup> Floor

Albany, NY 12232

**ATTN: #C038057, NYSDOT STATE SAFETY OVERSIGHT PROGRAM FOR  
RAIL TRANSIT AGENCIES**

### 7.6 State's Rights

All Proposals, upon submission to the Department, shall become its property for use as deemed appropriate. By submitting a Proposal, the Proposer covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. The Department attests to the following prerogatives with regard to Proposals submitted:

5. To accept or reject any or all Proposals;
6. To correct any arithmetic errors in any or all Proposals;
7. To change the Proposal's due date upon appropriate notification to interested firms;
8. To eliminate any mandatory RFP requirement(s) or specification(s) unmet by all Proposers in the evaluation of received Proposals;
9. To adopt any or all of a successful Proposer's Proposal;
10. To negotiate modifications to the scope, milestone payments schedule and total cost, and contract terms and conditions with the selected Proposer prior to contract award only if it is in the best interest of the State to do so;
11. To disqualify a Proposer from receiving the award if such Proposer, or anyone in the Proposer's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;
12. To revise/amend any provision of this RFP by written notification to Proposer's, prior to Proposal submission;
13. To make inquiries, by means it may choose, into the Proposer's background or statements made in the Proposal to determine the truth and accuracy of all statements made therein;
14. To select and award the contract to the Proposer whose proposal represents the best value to NYSDOT'

15. Conduct contract negotiations with the next responsible Proposer, should NYSDOT be unsuccessful in negotiating with the selected Proposer; and
16. Any contract entered into pursuant to an award of this solicitation shall contain a provision which grants the option to extend the terms and conditions of such contract to any other New York State agency. However, any response to this solicitation shall be based solely on the purpose of this solicitation and shall not factor in the possibility that this contract may, in the future, be applicable to other state agencies. Please be advised that any award made pursuant to this solicitation shall be based on the specific requirements of this solicitation only.

### **7.7 Consultant Responsibility When Proposing Former NYSDOT Employees**

It is the Consultant's responsibility to ensure they propose staff that is eligible to work on the proposed project. It is an individual's responsibility to comply with the Public Officer's Law.

The following procedure applies if either of the following criteria is met:

- It is two years or less between the date that the individual is proposed and the individual's date of separation from the State.
- The individual proposed has worked on the project while employed by NYSDOT regardless of how long ago they left NYSDOT.

#### Procedure

- Before the Consultant proposes an individual, the individual must obtain an opinion from the New York State Joint Commission on Public Ethics (<http://www.jcope.ny.gov>) that approves their participation in the project as they are proposed.
- A copy of this opinion must be on file in the Consultant's office and available for review by NYSDOT if requested.
- Failure to obtain New York State Joint Commission on Public Ethics approval for an individual's participation in a project may jeopardize the firm's designation for that project.

### **7.8 Method of Payment**

Payment for services provided under the Contract resulting from this RFP will be fixed for the duration of the Contract unless changed by an executed Contract Amendment. The Consultant will designate a Billing Representative who will be responsible for resolving any invoicing issues during the term of the contract.

Payment for services provided under this project shall be a Specific Hourly Rate reimbursement and compensation for actual non-salary costs incurred in the performance of the scope of services.

Requests for progress payments and final payments shall be made by the designated consultant on standard payment request forms (FIN-421). Use proper procedures for billing each deliverable. Submit a draft billing to NYSDOT's assigned Project Manager via the following sample electronic billing: <https://www.dot.ny.gov/main/business->



[center/consultants/forms-publications-and-instructions](https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions). The sample spreadsheet contains all of the proper, required billing forms, as well as a sample billing. The Project Manager will respond via email either with comments/corrections or with an approval to submit the final billing via signed hardcopy. The last and final payment will become due and payable within thirty (30) days after delivery of the final deliverable(s) and standard NYS FIN 421 payment request form.

## **7.9 Information for Selected Consultant(s)**

### **1. Registration with NYSDOT**

Consultant firms entering into contracts with the New York State Department of Transportation (NYSDOT) as prime consultants, joint venture partners, or subconsultants, are required to electronically register their firm using the Consultant Selection System web application (CSSWeb) by creating and registering an account to: 1) create and assign Consultant Identification Numbers (CINs) for each office registered by the firm; 2) provide general firm information including, but not limited to, legal name, Federal Identification Number (FEIN), ownership type, DBE/MBE/WBE status, firm principals, and office(s) address information. All consultant firms participating in a potential Contract must be registered electronically with NYSDOT prior to that Contract being forwarded to the Office of the State Comptroller for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the Contract.

Consultant Firm Registration instructions are available at:

<https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>

Questions regarding the CSSWeb application and firm registration should be directed to the CSSWeb administrator at [css@dot.ny.gov](mailto:css@dot.ny.gov) or by telephone at (51) 457-2600.

### **2. Registration with Statewide Financial System (SFS)**

Should this solicitation lead to a designation, the Prime consultant(s) will be required to electronically register with the Statewide Financial System (SFS) – if not already registered. NYSDOT will initiate the registration process in the SFS application and then contact the Prime consultant to provide them with further direction for completion of the registration process. The results of this process is an established SFS vendor number assigned to the Prime Consultant. If a firm has already registered in SFS in conjunction with another procurement, it will not likely need to be registered for this opportunity. However, a SFS vendor number is firm name specific. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity that NYSDOT's is doing business with. <https://www.osc.state.ny.us/state-vendors>.

### **3. Consultant Employment Disclosure Requirements**

Prime consultants should become familiar with the Consultant Employment Disclosure requirements, which went into effect June 19, 2006 at <https://www.dot.ny.gov/main/business-center/consultants/consultants->

[repository/contractor\\_instr\\_forms\\_a\\_b.pdf](#). The Consultant selected for this solicitation shall be required to complete “State Consultant Services – Contractor’s Planned Employment” (Form A, Attachment 5) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, Attachment 5) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15<sup>th</sup> of each year the contract is in effect.

4. Insurance Requirements

Please carefully read the terms and conditions of the draft contract appended as Attachment 1 of this RFP. Your attention is drawn to the insurance requirements for this project that are contained in Article 13 of the draft contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

5. Contractor Tax Certification

Per section 5-a of the NYS Tax Law, all vendors selected for contracts in excess of \$100,000 for the sale of goods or services must complete and submit Forms ST-220-CA and ST-220-TD (Contractor Certifications). The forms and instructions are available at: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) (Form ST-220-CA) and [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf) (Form ST-220-TD).

6. Certification Form EO-177 (Attachment #8)

In accordance with Executive Order No. 177, the successful Proposer will be required to certify that it does not have institutional practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. Certification Form EO-177 will be provided with the contract documents. The completed and signed certification must be returned with the firm’s executed contract.

7. Certification Form EO-14 and EO-16 (Attachment #9)

In accordance with Executive Order No. 14 and Executive Order No. 16, the successful Proposer will be required to certify they: (1) are not an Entity conducting business operations in Russia; (2) are not conducting, will not conduct, and will not engage any such company that conducts, commercial activity with (a) the Russian Government, and (b) commercial entities headquartered in Russia or with their principal place of business in Russia, in the form of contracting, sales, purchasing, investment, or any business partnership. Certification Form EO-14 and EO-16 will be provided with the contract documents. The completed and signed certification must be returned with the firm’s executed contract.

## 7.10 Inquiries and Information

All questions concerning this solicitation must be directed only to the individual(s) specified in Section 1.4 of this RFP. The last date to submit questions for this solicitation is stated in Section 7.12 below. Responses to all questions of a substantive nature, as well as copies of the questions, will be posted to the NYSDOT website.

### **7.11 Protest Procedures**

The New York State Department of Transportation (NYSDOT) has established a protest procedure to be utilized when an interested party challenges a Non-Engineering consultant designation by NYSDOT. The complete procedure can be accessed via <https://www.dot.ny.gov/main/business-center/consultants/general-info>.

### **7.12 Tentative Schedule of Key Events**

NYSDOT will attempt to adhere to the following tentative schedule with regard to processing this solicitation:

- a. **April 11, 2022:** RFP Release Date
- b. **April 18, 2022:** Deadline for questions about the RFP at 12:00 PM (EST)
- c. **April 25, 2022:** Questions/Answers about the RFP released by COB
- d. **May 23, 2022:** Deadline for the submission of proposals at 12:00 PM (EST)
- e. **End of May/Beginning of June 2022:** Evaluations
- f. **Mid-June 2022:** Technical Interviews
- g. **July/August 2022:** Approximate Recommendation & Designation
- h. **August/September 2022:** Contract Finalizing
- i. **January/February 2023:** Approximate Contract Award



**Attachment 1: Draft Contract**

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION**

**COMPTROLLER'S CONTRACT NO.: C038057**

**PROJECT: NYSDOT STATE SAFETY OVERSIGHT PROGRAM FOR RAIL TRANSIT AGENCIES**

This Contract made pursuant to Section 14 of the Transportation Law, by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as the "STATE") acting by and through the Department of Transportation (hereinafter referred to as the "DEPARTMENT" or "NYSDOT") whose office is at 50 Wolf Rd, Albany, NY 12232, and

**Consultant Firm Name**

**Consultant Firm Address**

**Consultant Firm Address**

(hereinafter referred to as the "Consultant")

WITNESSETH:

WHEREAS, the DEPARTMENT desires the CONSULTANT because of its ability and reputation, to perform the services hereinafter mentioned upon the PROJECT which is fully described in SCHEDULE A and the CONSULTANT agrees to provide these services.

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

**ARTICLE 1 – PERFORMANCE OF WORK**

The CONSULTANT shall perform all of the work described in SCHEDULE A and cause such work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this CONTRACT. The CONSULTANT shall perform the work in accordance with professional standards and with the diligence and skill expected of a company with extensive experience in the performance of work of the type described in SCHEDULE A. The CONSULTANT shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the work in accordance with this CONTRACT. The CONSULTANT'S Project Manager shall have the responsibility for the overall supervision and conduct the work on behalf of the CONSULTANT and that the persons described in SCHEDULE A shall serve in the capacities described herein. Any change of key personnel by the CONSULTANT shall be subject to the prior written approval of the STATE. The STATE reserves the option to extend the terms and conditions of this CONTRACT to any other state agency in New York subject to the approval of all necessary state officials.

The CONSULTANT shall commence work no later than ten (10) calendar days after receiving notice to proceed from the DEPARTMENT.

## **ARTICLE 2 – DOCUMENTS FORMING THE CONTRACT**

The CONTRACT documents shall be deemed to include this AGREEMENT (including Exhibits), the provisions required by state and federal law to be inserted in the CONTRACT as set forth in Appendix A, Appendix A-1, Appendix B, Appendix C, Appendix D, Schedule A, Schedule B, the DEPARTMENT’S Request for Proposals (RFP, dated [REDACTED], including any modifications) incorporated by reference, and the CONSULTANT’S Proposal (dated [REDACTED], including any clarifications) incorporated by reference.

## **ARTICLE 3 – ORDER OF PRECEDENCE**

In the event of any inconsistencies between or among the provisions and contents of this CONTRACT, it is agreed that such inconsistency shall be resolved in the following descending order of precedence:

1. APPENDIX A;
2. The provisions required by state and federal law to be inserted in the CONTRACT as set forth in APPENDIX A-1, APPENDIX B, APPENDIX C, and APPENDIX D
3. This CONTRACT, including Signature Page, Notary Page;
4. SCHEDULE A;
5. SCHEDULE B;
6. The STATE’s Request for Proposals (including any modifications); and
7. The CONSULTANT’s Proposal.

## **ARTICLE 4 – TERM OF THE CONTRACT**

The CONSULTANT agrees to complete all work of this CONTRACT as required within a [REDACTED] month base term, which shall commence on [REDACTED] and end on [REDACTED]. The CONTRACT may be extended for up to [REDACTED] ([REDACTED]) one-year periods as may be agreed by the parties to the CONTRACT and as approved by the Office of the State Comptroller (OSC).

## **ARTICLE 5 – MAXIMUM AMOUNT PAYABLE**

Item I – The maximum aggregate amount payable by the STATE to the CONSULTANT hereunder for the performance and completion of the work is \$ [REDACTED] unless increased by a CONTRACT AMENDMENT. It is understood and agreed that the STATE will only reimburse the CONSULTANT for approved costs incurred in the performance of authorized project tasks.

Item II – The CONSULTANT specifically agrees that the CONTRACT shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the STATE beyond the monies available for the purpose.

## **ARTICLE 6 – CONTRACT PAYMENT**

The CONSULTANT shall provide complete and accurate billing invoices to the DEPARTMENT to receive payment. Billing invoices submitted to the DEPARTMENT must contain all information and supporting documentation required by the CONTRACT, the DEPARTMENT and OSC. Payment for invoices submitted by the CONSULTANT shall only be rendered electronically unless payment by paper check is expressly authorized by the New York State Department of Transportation Commissioner (hereinafter referred to as the “COMMISSIONER”), in the COMMISSIONER’S sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices.

The CONSULTANT must enroll in the State Comptroller’s ePayments system to authorize electronic payments and acknowledges that it will not receive payment on any invoices submitted under this CONTRACT if it does not comply with the State Comptroller’s electronic payment procedures. Authorization instructions are provided on the State Comptroller’s website at: <https://www.osc.state.ny.us/state-vendors>. For assistance email: [helpdesk@sfs.ny.gov](mailto:helpdesk@sfs.ny.gov)

## **ARTICLE 7 – PROVISION FOR PAYMENT**

The STATE shall pay to the CONSULTANT and the CONSULTANT agrees to accept as full compensation for its services under this CONTRACT:

Item I – Specific Hourly Rates of pay shown in SCHEDULE B, for employees assigned to this Project. The Specific Hourly Rates are not subject to audit, however, the number of hours charged is subject to audit. If the CONTRACT is extended beyond (enter end date in Article 4), then all of the Specific Hourly Rates of pay shown in SCHEDULE B, are eligible for rate adjustments. They may be adjusted annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID PCU5413—5413) for the most recent 12-month period as calculated by the U.S. Department of Labor – Bureau of Labor Statistics, or 2%, whichever is lower, all subject to current market conditions. If at any time the above Index Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.

Item II – Actual Direct Non-Salary Costs incurred in fulfilling the terms of this CONTRACT are subject to audit. Such costs may include, but are not limited to, those shown in SCHEDULE B. All reimbursement for travel, meals and lodging shall be made at actual cost paid but such reimbursement shall not exceed the prevailing maximum rates established by the State Comptroller.

Items purchased under this CONTRACT shall become property of the STATE at the completion of the work, or at the option of the STATE, appropriate value shall be established as a credit to the STATE.

## **ARTICLE 8 – PARTIAL PAYMENTS**

The CONSULTANT shall be paid in progress payments based on allowable costs incurred during the period in accordance with Article 7 of this CONTRACT.

The STATE will make payments to the CONSULTANT in accordance with Section 179(f) of the State Finance Law. Payments are subject to the approval of NYSDOT. Payments shall not be withheld unreasonably.

The CONSULTANT shall maintain and update once each month, if changes have taken place or are anticipated, the Project Schedule contained in SCHEDULE A.

The CONSULTANT shall inform the STATE and all subcontractors/subconsultants of the CONSULTANT'S schedule for submitting monthly vouchers to the STATE, said schedule shall be strictly adhered to by the CONSULTANT.

The CONSULTANT will not include any provisions in their subcontracts that would circumvent the intent of 49 CFR 26.29 to require the CONSULTANT to make partial payments to subcontractors/subconsultants within ten (10) calendar days after receipt of payment from the STATE.

All subcontractor/subconsultant vouchers received by the CONSULTANT at least ten (10) calendar days prior to a scheduled billing, shall be included in that billing, even if the CONSULTANT does not have other costs to be billed for that period. The CONSULTANT shall inform the subcontractor/subconsultant of the date the voucher was submitted to the STATE and the amount included for the subcontractor/subconsultant.

## **ARTICLE 9 – FINAL PAYMENT**

Section 179 of the State Finance Law required the STATE to make final payment within thirty (30) calendar days after receipt of an invoice which is properly prepared and submitted. The STATE in accordance with the provisions of State Finance Law has determined that the STATE will require a sixty (60) calendar day audit period for final payments at which time the 30-calendar day interest-free period will commence. The CONSULTANT is required to make final payment to all subcontractors/subconsultants within ten (10) calendar days of receipt of final payment from the State.

The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the STATE from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this CONTRACT or for any part thereof except as otherwise provided in the paragraph below.

The CONSULTANT shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and make such materials available at its office at all reasonable times during the term of this CONTRACT and for the period of time specified in Clause No. 10., "Records" of APPENDIX A, for inspection by the STATE, Federal Highway



Administration (FHWA), or any authorized representatives of the Federal Government and copies thereof shall be furnished if requested.

#### **ARTICLE 10 – INSPECTION**

The duly authorized representatives of the STATE, and on Federally aided projects, representatives of the Federal Highway Administration (FHWA), shall have the right, at all times, to inspect the work of the CONSULTANT.

#### **ARTICLE 11 – EXTRA WORK**

If the CONSULTANT believes that any work is, or may be, beyond the scope of the CONTRACT (extra work), or that additional work is necessary, the CONSULTANT shall notify the STATE, in writing of this fact prior to beginning any work. The notification shall include all information required by the DEPARTMENT. The STATE shall be the sole judge as to whether or not such work is in fact beyond the scope of this CONTRACT and constitutes extra work. No extra or additional work shall be started prior to written authorization from the STATE. The STATE shall be under no obligation to reimburse the CONSULTANT for any extra or additional work performed without the prescribed notification and authorization. The STATE will not allow fixed fee for any extra work undertaken without prescribed notification and authorization. In the event that the STATE determines that such work does constitute extra work, the STATE shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, a CONTRACT AMENDMENT providing the compensation and describing the work authorized shall be issued by the STATE to the CONSULTANT for execution after approval have been obtained from necessary STATE officials, and if required, from the Federal Highway Administration.

In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render the STATE all assistance required by the STATE. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this CONTRACT for the additional services above described, the STATE's directions shall be exercised by the issuance of a separate contract, if necessary.

#### **ARTICLE 12 – CONSULTANT LIABILITY**

To the fullest extent permissible by law, the CONSUTLANT shall indemnify and save harmless the STATE, and any municipality, public benefit corporation, railroad, and/or public utility whose property or facilities are affected by the work, from suits, claims, actions, damages and costs, of every name and description arising from the work under its contract during its prosecution and until the final acceptance thereof. The CONSULTANT and any assigns, heirs, or successors in interest shall also indemnify and save harmless, to the fullest extent permitted by law, the inspecting engineer or inspector working for the STATE relative to the PROJECT from suits, claims, actions, damages and costs involving personal injury and property damage arising from the CONSULTANT'S work under the CONTRACT during its prosecution and until the final acceptance thereof. The STATE may retain such monies from the amount due the

CONSULTANT as may be necessary to satisfy any claim for damages recovered against the STATE, any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the work or consultant inspecting engineers or inspectors working for the STATE relative to the PROJECT. The CONSULTANT'S obligation under this paragraph shall not be deemed waived by the failure of the STATE to retain the whole or any part of such monies due the CONSULTANT, nor where such suit, action, damages and/or costs have not been resolved or determined prior to release of any monies to the CONSULTANT under the CONTRACT, nor shall such obligation be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the CONSULTANT, Subconsultant or any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, or for any consultants working for the STATE. It is understood by the STATE and the CONSULTANT that the CONSULTANT'S Professional Liability/Errors and Omissions Policy required in the Article 13 -Insurance of this CONTRACT shall be utilized for claims involving the CONSULTANT'S professional negligence.

The CONSULTANT has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Section. This obligation shall include the cost of attorney's fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Such obligation to indemnify in the foregoing paragraph does not extend to those suits, action, damages and costs of every name that arise out of this sole negligence of the STATE, or negligence of any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the contract work, or the negligence of any consultants working for the STATE, their agents or employees, relative to the construction, alteration, or repair or maintenance of a building, highway, or structure or appurtenances and appliances thereof including moving, demolition and excavating connected therewith. Notwithstanding the foregoing, the parties being defended by the CONSULTANT may elect to join any action or tender their own defense, at their sole expense and discretion.

## **ARTICLE 13 – INSURANCE**

The CONSULTANT shall procure, at its own sole cost an expense, and shall maintain in force at all times during the term of the CONTRACT including any extensions or renewals until satisfactory completion of all work under the CONTRACT, the policies of insurance covering all operations under the CONTRACT whether performed by it or its subconsultants as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York and that have an A.M. Best Company rating of (A-) or better or approved by the DEPARTMENT. The DEPARTMENT may, at its sole discretion permit the placement of policies with a non-authorized carrier or carriers upon request by the CONSULTANT accompanied by the documentation required by 11 NYCRR §20.7 *et seq.*, provided that nothing herein shall be construed to require the DEPARTMENT to accept insurance placed with a non-authorized carrier under any circumstances. The CONSULTANT shall deliver to the DEPARTMENT evidence of such policies as the DEPARTMENT deems necessary to verify that the required insurance is in effect. If policies are changed or canceled,

the CONSULTANT shall inform the STATE immediately. The STATE will determine whether to issue an order to the CONSULTANT to stop work.

1. **Conditions Applicable to Insurance.** All policies of insurance required by this CONTRACT must meet the following requirements:
  - A. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the CONSULTANT are specified in Section 2, Insurance Requirements, below. General Liability insurance shall apply separately on a per-job or per-project basis.
  - B. **Policy Forms.** Except as may otherwise specifically provided herein or agreed in writing by the DEPARTMENT, policies must be written on an **occurrence** basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at a minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy. *Insurance policies that remove or restrict blanket contractual liability located in the “insured contract” definition (as stated in Section V, Number 9, Item f of the ISO-GLC policy) or that remove or modify the “insured contract” exception to the employers liability exclusion so as to limit coverage for claims that arise out of contract work, or that do not cover the additional insured for claims involving injury to employees of the named insured or subconsultants, are not acceptable.* Policy forms must be provided to the DEPARTMENT upon request.
  - C. **Certificates of Insurance/Notices.** CONSULTANT shall provide a Certificate or Certificates of Insurance in a form satisfactory to the COMMISSIONER, before commencing any work under this CONTRACT. Certificates or transmittal correspondence shall reference the NYSDOT CONTRACT Number. CONSULTANT is strongly encouraged to transmit certificates and other materials concerning insurance coverage, reference the CONTRACT Number and the name of the CONSULTANT in the Subject Line, by email to: [Insur.consult.contr@dot.ny.gov](mailto:Insur.consult.contr@dot.ny.gov).

New York State Department of Transportation  
Office of Contract Management  
50 Wolf Rd, 6<sup>th</sup> Floor  
Albany, NY 12232

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (a) canceled, (b) materially changed, or (c) permitted to expire or lapse for any reason except upon ten (10) calendar days prior written notice to the DEPARTMENT by Certified Mail, Return Receipt Requested at the address stated above. In addition, if required by the DEPARTMENT, the CONSULTANT shall deliver to the DEPARTMENT within ten (10) business days of such a request a copy of or any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall:

1. Be in a form satisfactory to the DEPARTMENT. **The ACORD 25 Certificate must be accompanied by an ACORD 855 “New York Construction Addendum”** completed to indicate information about the liability insurance.

2. Be signed and dated by an authorized representative of the insurance carrier or producer.
3. Disclose any deductible, self-insured retention, aggregate limit.
4. Refer to this CONTRACT by number on the face of the certificate.

If at any time during the term of this CONTRACT, it shall come to the attention of the DEPARTMENT that required insurance is not in effect or that adequate proof of insurance as not been provided, the DEPARTMENT may, at its option:

1. Direct the CONSULTANT to suspend work and not to re-enter the premises with no additional payment or extension of time due on account thereof, or
2. May withhold further contract payments in accordance with Partial Payments, Section §109-04 of the Standard Specification, or
3. Treat such failure as a breach or default of the CONTRACT.

**D. Additional Insureds.** All insurance policies required by these specifications, except Workers' Compensation, NYS Disability and Professional Liability shall be endorsed to provide coverage to **"The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees"** with respect to any claim arising from the CONSULTANT'S activities. The endorsement shall be affected by endorsement of the applicable policy using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 for a form(s) that provides equivalent coverage.

**E. Primary Coverage.** The liability and protective liability insurance policies shall provide primary and non-contributory coverage to the DEPARTMENT for any claim arising from the CONSULTANT'S work under this CONTRACT, or as a result of the CONSULTANT'S activities.

**F. Waiver of Subrogation.** As to every type and form of insurance coverage required from the CONSULTANT, there shall be no right of subrogation against **the State of New York/New York State Department of Transportation, its agents or employees**. To the extent that any of the CONSULTANT'S policies of insurance prohibit such a waiver of subrogation, CONSULTANT shall secure the necessary permission to make this waiver.

**G. Policy Renewal/Expiration.** At least ten (10) calendar days prior to the expiration of any policy required by this CONTRACT, evidence of renewal or replacement policies of such insurance with terms no less favorable to the DEPARTMENT than the expiring policies shall delivered to the DEPARTMENT in the manner required for service of notice in Section C – Certificates of Insurance/Notices above.

**H. Self-Insurance Retention/Deductibles.** Consultants utilizing self-insurance programs are required to provide a description of the program for DEPARTMENT approval.

Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the CONTRACT documents of a particular project, the CONSULTANT or third-party administered insurance deductible shall be limited to the amount of the bid deposit of \$100,000, whichever is less. Security is not required if it is otherwise provided to an administrator or an approved risk management plan. The DEPARTMENT will not accept self-insured retention programs without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The CONSULTANT shall be solely responsible for all claim expenses and loss payments within any permitted deductible or self-insured retention. If the CONSULTANT'S deductible in a self-administered program exceeds the amount of the bid deposit, the CONSULTANT shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by the DEPARTMENT must be issued by a guarantor or surety with an A.M. Best Company rating of (A-) or better. If, at any time during the term of this CONTRACT, the DEPARTMENT, in its sole discretion, determines that the CONSULTANT is not paying its deductible, it may require the CONSULTANT to collateralize all or any part of the deductible or self-insured retention or any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the CONSULTANT.

- I. Waiver of Indemnities.** The CONSULTANT waives any right of action it and/or its insurance carrier might have against the DEPARTMENT (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this CONTRACT. The CONSULTANT waives any right of action it and/or its insurance carrier might have against the DEPARTMENT (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.
  - J. Subconsultant's Liability Insurance.** In the event any portion of the work described in this CONTRACT is performed by an approved subconsultant, the insurance requirements of this Article shall be incorporated into the subcontract agreement. Subconsultant insurance requirements shall include the requirements for Workers' Compensation, NYS Disability Benefits, Commercial General Liability, and if applicable, Commercial Auto and/or Professional Liability. Excess or umbrella insurance is not required for subconsultants. CONSULTANT shall require that Certificates of Insurance, meeting the requirements of the DEPARTMENT are provided to the DEPARTMENT documenting the insurance coverage for each and every subconsultant employed by them to do work under this CONTRACT.
- 2. Insurance Requirements.** The types of insurance and minimum policy limits shall be as follows:

    - a. Workers' Compensation and Disability Insurance.** As required by State Finance Law §142, the CONSULTANT shall maintain in force Workers' Compensation insurance upon forms required by or acceptable to the Workers' Compensation Board for all of CONSULTANT's employees. CONSULTANT shall also maintain disability insurance as required by the Disability Benefits Law of the State of New York.

**b. Commercial General Liability Insurance.** The CONSULTANT shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including tort liability of another assumed in a business contract) occurring on or in any way related to the premises of occasioned by reason of the operations of CONSULTANT. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of no less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:

- i. Coverage for contractual liability by the CONSULTANT insured under an insured contract (including the tort liability of another assumed in a business contract).
- ii. All insurance policies required by these specifications except Workers' Compensation, NYS Disability Benefits, and Professional Liability shall be endorsed to provide coverage to **"The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees"** using ISO Form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.
- iii. Products – completed Operations Coverage, as provided in the General Liability Policy, or in certain instance through ISO Form CG 26 11 09 99 or suitable equivalent.
- iv. Where contract work will be performed by unregistered off-road equipment, CONSULTANT shall provide documentation of a blanket Pollution Liability Policy, or an endorsement to cover short-term pollution events, ISO Form CG 04 33 10 01 or equivalent.
- v. Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.
- vi. Explosion, Collapse and Underground Hazards Coverage ("XCU") for contracts that call for the performance of excavating, underground work, and/or the use of blasting equipment.

**c. Commercial Automobile Insurance including liability and required coverage for New York.** *(applicable to any project where automobiles or other vehicles will be employed to complete the work).* In the event that automobiles are used in connection with CONSULTANT'S business or operations with the DEPARTMENT, the CONSULTANT shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any of CONSULTANT'S automobiles (including owned, hired and non-owned vehicles) on and around the project. This may be ISO Form CA 00 01 10 01, CA 00 01 01 87 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than \$1,000,000 each accident.

- d. Umbrella or Excess Liability Insurance.** The CONSULTANT shall maintain an occurrence form umbrella liability policy or policies insuring against liability arising from premises (including loss of use thereof), operations, independent consultants, project-completed operations, personal injury and advertising injury, and liability insured under an insured contract (including tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of CONSULTANT or arising from automobile liability as described above. Such coverage shall be written on an ISO Occurrence Form CU 00 01 12 07 or a policy form providing equivalent coverage. In the event that umbrella coverage is unavailable, equivalent excess coverage may be substituted. The minimum required limits for the umbrella/excess coverage shall be sufficient to provide a total of not less than \$5,000,000 per occurrence/aggregate.
- e. Consultant's Risks.** *(applicable to all contracts)* The CONSULTANT shall be responsible for obtaining any insurance it deems necessary to cover its own risks including without limitation: (1) business interpretation, such as gross earnings, extra expense, or similar coverage, (2) personal property, and/or (3) automobile physical damage and/or theft. In no event shall the DEPARTMENT be liable for any damage to, or loss, of personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this CONTRACT, even if such loss is caused by the negligence of the DEPARTMENT.
- f. Railroad Protective Liability Insurance** *(applicable to any consulting work where the CONSULTANT is entering railroad right-of-way independent of a construction contract described in §105-09).* The CONSULTANT shall maintain at its own expense railroad protective liability policy of insurance in the name of the affected railroad and with limits of coverage as specified in the Special Notes on Railroad Insurance, or if no limits of coverage are specified, the limits shall be not less than \$5,000,000 combined Bodily Injury Liability and/or Property Damage for each occurrence with a \$10,000,000 aggregate limit applying separately to each annual period. Said policy shall be subject to approval of the railroad and comply with 23 CFR 646 Subpart A.

#### **ARTICLE 14 – INTERCHANGE OF DATA**

All technical data in regard to the PROJECT existing in the office of the STATE or existing in the offices of the CONSULTANT shall be made available to the other party to this CONTRACT without expense to such other party.

#### **ARTICLE 15 – DISPOSITION OF DATA**

At the time of completion of the work, the CONSULTANT shall make available to the STATE all documents and data pertaining to the work or to the PROJECT which materials at all times shall be the property of the STATE. It is agreed that the CONSULTANT may maintain copies of all documents and data. Or in the event that this CONTRACT is terminated for any reason,

then, within ten (10) calendar days after such termination, the CONSULTANT shall make available to the STATE the aforementioned data and material.

## **ARTICLE 16 – DAMAGES AND DELAYS**

The CONSULTANT agrees that no charges or claim for damages shall be made by them for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this CONTRACT. Such delays or hindrances, if any, shall be compensated for by extension of time for such reasonable period as the STATE may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the STATE of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising its right under ARTICLE 9 of this CONTRACT.

## **ARTICLE 17 – NOTICE OF BANKRUPTCY, VENUE, AUDITS**

If, prior to final audit, CONSULTANT files for relief pursuant to Title 11 of the United States Code under Bankruptcy Laws or a successor statute, this CONTRACT shall be treated as an executory contract under 11 USC S365 of the Bankruptcy Laws or successor statute, and subject to assumption or reject by the debtor within the time permitted by law.

The CONSULTANT must immediately send written notice to the Office of Contract Management of the New York State Department of Transportation at its main office in Albany, NY and send all relevant pleading of the voluntary or involuntary filing of a Bankruptcy proceeding by the CONSULTANT, its subsidiary, its principals and officers or a related entity whether or not the CONSULTANT believes that any debt is owed to the STATE by final audit or otherwise.

The determination of any rights under this CONTRACT shall be adjudicated in a State or Federal Court with jurisdiction over the matter, and venue for the determination of such rights shall be in Albany, NY.

The CONSULTANT agrees that the automatic stay under 11 USC S362 or a successor statute shall be deemed inapplicable or that this agreement shall constitute consent to the lifting of the stay with respect to the State's performance of or completion of any audit pursuant to the terms of this CONTRACT.

## **ARTICLE 18 – TERMINATION**

The STATE shall have the absolute right to terminate this CONTRACT, and such action shall in no event be deemed a breach of CONTRACT:

1. If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the actual work performed by the CONSULTANT prior to termination, including,



but not limited to, the number of hours and other authorized costs audited in accordance with the terms of the CONTRACT.

2. If the termination is brought about as a result of the unsatisfactory performance on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the STATE.
3. The STATE reserves the right to terminate this CONTRACT in the event it is found that the certification filed by the CONSULTANT in accordance with the requirements contained in State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONSULTANT in accordance with the written notification terms of the CONTRACT.

## **ARTICLE 19 – DEATH OR DISABILITY OF THE CONSULTANT**

In the case of death or disability of one or more but not all persons herein referred to as the CONSULTANT, the rights and duties of the CONSULTANT shall devolve upon the survivors of the CONSULTANT, who shall be obligated to perform the services required under this CONTRACT, and the STATE shall make all payments due to them.

In case of the death or disability of all persons herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within sixty (60) calendar days to the STATE or their duly authorized representative. In case of the failure of the CONSULTANT's successors or personnel representatives to make such delivery on demand, then in that event the representatives of the CONSULTANT shall be liable to the state for any damages it may sustain by reason thereof. Upon the delivery of all such data to the STATE, the STATE will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of death of the last survivor.

## **ARTICLE 20 – INDEPENDENT CONTRACTOR**

The CONSULTANT, in accordance with their status as an independent contractor, covenants and agrees that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the STATE by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE, including but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or Retirement membership or credit.

## **ARTICLE 21 – COVENANT AGAINST CONTINGENT FEES**

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Contract, and that they have not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this CONTRACT. For breach or violation of this warranty, the STATE shall have the right to annul this CONTRACT without liability, or, in its discretion, to deduct from the CONTRACT price or consideration, or

otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## **ARTICLE 22 – TRANSFER OF AGREEMENT**

The CONSULTANT specifically agrees, as required by State Finance Law, Section 138, that they are prohibited by law from assigning, transferring, conveying, subletting or otherwise disposing of the CONTRACT or of their right, title or interest therein, or their power to execute such CONTRACT, to any other person, company or corporation, without the previous consent in writing of the STATE.

If this provision of the law be violated, the STATE shall revoke and annul the CONTRACT and the STATE shall be relieved from any and all liability and obligations thereunder to the person, company or corporation to whom the CONSULTANT shall assign, transfer, convey, sublet or otherwise dispose of the CONTRACT, except so much as may be required to pay his employees.

## **ARTICLE 23 – PROPRIETARY RIGHTS**

The CONSULTANT agrees that if copyrights, patentable discoveries or inventions or rights in data should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York an irrevocable, nonexclusive, nontransferable paid-up license to reproduce, publish, make, use, and sell each subject invention throughout the world and by and on behalf of the Government of the United States and States and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27, and other applicable Federal laws, rules and regulations.

## **ARTICLE 24 – SUBCONTRACTORS/SUBCONSULTANTS**

The CONSULTANT may arrange for a portion(s) of its responsibilities under this CONTRACT to be subcontracted to qualified, responsible subconsultants/subcontractors, subject to approval of the STATE. If the CONSULTANT determines to subcontract a portion of the services, the subconsultants/subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this CONTRACT must be fully explained by the CONSULTANT to the STATE. As part of this explanation, the subconsultant/subcontractor must submit to the STATE a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the CONSULTANT prior to execution of this CONTRACT.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this CONTRACT including, but not limited to, the body of this CONTRACT, Appendix A – Standard Clauses for New York State Contracts, and the advertisement for proposals. Unless waived in writing by the STATE, all subcontracts between the CONSULTANT and subconsultants/subcontractors shall expressly name the STATE, through the DEPARTMENT, as the sole intended third party beneficiary of such subcontract. The STATE reserves the right to review and approve or reject any subcontract, as well as any

amendment to said subcontract(s), and this right shall not make the STATE a party to any subcontract or create any right, claim, or interest in the subconsultant/subcontractor or proposed subconsultant/subcontractor against the STATE.

The STATE reserves the right, at any time during the term of the CONTRACT, to verify that the written subcontract between the CONSULTANT and subconsultants/subcontractors is in compliance with all provisions of this Section and any subcontract provisions contained in this CONTRACT.

The CONSULTANT shall give the STATE immediate notice of writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subconsultant/subcontractor or which may affect the performance of the CONSULTANT's duties under the CONTRACT. Any subcontract shall not relieve the CONSULTANT in any way of any responsibility, duty, and/or obligation of the CONTRACT.

If at any time during the performance under this CONTRACT total compensation to a subconsultant/subcontractor exceeds or is expected to exceed \$100,000, that subconsultant/subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

#### **ARTICLE 25 – CERTIFICATION REQUIRED BY 49CFR, PART 29**

The signator to this CONTRACT, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company, partner, director, officer, or major stockholder (five percent or more ownership):

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
2. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past three (3) years;
3. Does not have a proposed debarment pending; and
4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

#### **EXCEPTIONS**

#### **ARTICLE 26 – CERTIFICATION FOR FEDERAL-AID CONTRACTS**

The prospective participant certifies, by signing this Contract, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any

cooperative agreement, and extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriate funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall completed and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by Section 1342, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
4. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification shall be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

## **ARTICLE 27 – RESPONSIBILITY OF THE CONSULTANT**

The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the CONSULTANT under this CONTRACT. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its services. However, the STATE may in certain circumstances, provide compensation for such work.

Neither the STATE's review, approval, or acceptance of, nor payment for, the services required under this CONTRACT shall be construed to operate as a waiver of any rights under this CONTRACT or of any case of action arising out of the performance of this CONTRACT, and the CONSULTANT shall be and remain liable to the STATE in accordance with applicable law for all damages to the STATE cause by the CONSULTANT's negligent performance or breach of contract of any of the services furnished under the CONTRACT.

The rights and remedies of the STATE provided for under this CONTRACT are in addition to any other rights and remedies provided by law.

If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint ventures associated for the purposes of undertaking this CONTRACT, each such entity acknowledges and hereby affirmatively represents and agrees that each has the power to bind the CONSULTANT and each of the others hereunder, and as such, each acts both as principals and agent of the CONSULTANT and of each of the others hereunder. Each further acknowledges and agrees that all such entities, partners or joint ventures associated for the purposes of undertaking this CONTRACT shall be jointly and severally liable to third parties, including, but not limited to the STATE, for acts or omissions of the CONSULTANT, or any other entity, partner or joint venture hereunder.

If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint ventures associated for the purposes of undertaking this CONTRACT, each such entity acknowledges and hereby affirmatively represents and agrees that the respective rights, duties and liabilities of each hereunder shall be governed by the laws of the State of New York, including, but not limited to the New York Partnership Law.

## **ARTICLE 28 – SECURITY AND CONFIDENTIALITY OF INFORMATION**

Information received as part of this CONTRACT shall be considered Confidential Information. The CONSULTANT warrants that it will take the appropriate steps as to its personnel, agents, officers, and any subcontractors/subconsultants regarding the obligations arising under this clause to insure such confidentiality. The CONSULTANT shall have written policies and/or business procedures in place which will protect Confidential Information from unauthorized disclosure, use, access, loss, alteration, or destruction. The CONSULTANT may disclose to other parties, as authorized by the NYSDOT Project Manager, or as described in the scope of services, only the information necessary to perform services under this CONTRACT. However, the CONSULTANT shall in no circumstance, communicate with the public or news media without prior authorization from the State’s designee. Neither shall the CONSULTANT disclose information deemed confidential by the STATE nor shall the CONSULTANT disclose any other information obtained or developed in the performance of services under this CONTRACT without written authorization of the STATE. This warranty shall survive termination of this CONTRACT.

The CONSULTANT shall comply with the provisions of the New York State Information Security Breach and Notification Act, including General Business Law Section §89-aa and State Technology Law §208 as enacted by such Act or subsequently amended. In the event of an information security breach resulting in the unauthorized disclosure of personal information, the CONSULTANT shall be liable for the costs associated with such breach if caused by the CONSULTANT’s negligence or willful acts or omissions, or the negligent or willful acts or omissions of the CONSULTANT’s agents, officers, employees or subconsultants.

## **ARTICLE 29 – VENDOR RESPONSIBILITY**

The Department of Transportation has undertaken an affirmative review of the CONSULTANT’s responsibility in accordance with the applicable standards outlined in Comptroller’s “Guide to Financial Operations”, and based upon such review, reasonable assurance that the CONSULTANT is responsible has been determined.

**General Responsibility:** The CONSULTANT shall, at all times during the CONTRACT, remain responsible. The CONSULTANT agrees, if requested by the Commissioner of NYSDOT (or his or her designee), to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organization and financial capacity.

**Suspension of Work (for Non-Responsibility):** The Commissioner of NYSDOT (or his or her designee) in his or her sole discretion, reserves the right to suspend any or all activities under this CONTRACT at any time when he or she discovers information that calls into question the

responsibility of the CONSULTANT. In the event of such suspension, the CONSULTANT will be given written notice outlining the particulars of such suspension order. Upon issuance of such notice, the CONSULTANT shall comply with the terms of the suspension order. CONTRACT activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the CONTRACT.

Termination (for Non-Responsibility): Upon written notice to the CONSULTANT, and a reasonable opportunity to be heard with appropriate NYSDOT or staff, the CONTRACT may be terminated by the Commissioner of NYSDOT (or his or her designee) at the CONSULTANT's expense where the CONSULTANT is determined by the Commissioner of NYSDOT (or his or her designee) to be non-responsible. In such event, the Commissioner of NYSDOT (or his or her designee) may complete the contractual requirements in any manner he or she may deem advisable and pursue legal or equitable remedies for such breach.

## **ARTICLE 30 – NOTICES**

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
  - a. Via certified or registered United States mail, return receipt requested;
  - b. By facsimile transmission;
  - c. By personal delivery;
  - d. By expedited delivery service; or
  - e. By email.

Such notices shall be addressed as follows or to such difference addresses as the parties may time-to-time designate:

### **New York State Department of Transportation:**

**Contact Person's Name:** Matt Bromirski, Contract #C038057

**Title:** Deputy Assistant Commissioner, Office of Contract Management

**Address:** NYSDOT, Office of Contract Management, 50 Wolf Rd, 6<sup>th</sup> Floor, Albany, NY 12232

**Telephone Number:** (518) 457-2600

**Facsimile Number:** (518) 457-2875

**Email:** [Matt.Bromirski@dot.ny.gov](mailto:Matt.Bromirski@dot.ny.gov)

### **Consultant's Name: Enter Prime Consultant Name**

**Contact Person's Name:**

**Title:**

**Address:**

**Telephone Number:**

**Facsimile Number:**

**Email:**

2. Any such notice shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or certified registered United States mail, as of

the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

3. The parties may from time-to-time, specify any new or different address in the United States as their address for purpose of receiving notice under this CONTRACT by giving fifteen (15) calendar days' notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this CONTRACT.
4. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution.

## **ARTICLE 31 – TITLE VI ASSURANCE**

During the performance of this CONTRACT, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the “CONSULTANT”) agrees as follows:

1. **Compliance with Regulations:** The CONSULTANT shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Regulations, Part 200 as they may be amended from time-to-time (hereinafter referred to as the “Regulations”), which are herein incorporated by reference and made a part of this CONTRACT.
2. **Nondiscrimination:** The CONSULTANT, with regard to the work performed by it during the CONTRACT, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors/subconsultants, including procurements or materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, Section 21.5 of the Regulations, including employment practices when the CONTRACT covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontractor/Subconsultants, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor/subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT’s obligations under this CONTRACT and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
4. **Information and Reports:** The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to NYSDOT’s Office of Diversity and Inclusion or FHWA, as appropriate, and shall set forth the efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this CONTRACT, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the CONSULTANT under the CONTRACT until the CONSULTANT complies and/or
  - b. Cancellation, termination, or suspension of the CONTRACT in whole or in part.
6. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CONSULTANT shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interest of the United States.

## **ARTICLE 32 – CONSULTANT DISCLOSURE LEGISLATION**

In accordance with Chapter 10 of the Laws of 2006, the CONSULTANT shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B), Exhibit        and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15<sup>th</sup> of each year the CONTRACT is in effect. The CONSULTANT shall provide information regarding all employees providing service under this CONTRACT, whether employed by the CONSULTANT or any subcontractor or subconsultant. Form B will capture historical information, detailing actual employment data for the most recently completed State fiscal year (April 1<sup>st</sup> to March 31<sup>st</sup>). Annual employment reports should be submitted to the following three agencies. It is recommended, however, that consultants check the agency websites annually to confirm the address:

**By Mail:**

NYS Office of the State Comptroller  
Bureau of Contracts  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236  
ATT: Consultant Reporting

NYS Department of Civil Service  
Alfred E. Smith Building  
Albany, NY 12239  
ATT: Chapter 10 Counsel’s Office

**By Email:**

NYS Department of Transportation



Reports that are submitted to the NYS Department of Transportation must be submitted electronically, preferably as a Word, Excel, or PDF file via email to: [consultantdisclosure@dot.ny.gov](mailto:consultantdisclosure@dot.ny.gov).

### **ARTICLE 33 – ENSURING PAY EQUITY BY STATE CONSULTANTS/CONTRACTORS**

In accordance with Executive Order 162, issued on January 9, 2017, the CONSULTANT shall provide detailed workforce utilization reports of the CONSULTANT and each subconsultant/subcontractor that include, in addition to equal employment opportunity information, the job title and salary of each employee directly performing work on a STATE contract.

If the CONSULTANT cannot identify the individuals working directly on a STATE contract, then the CONSULTANT and each subconsultant/subcontractor shall provide such information of each employee in the CONSULTANT's entire workforce. Such information shall be reported to NYSDOT at quarterly intervals.

The reporting period shall be on a quarterly basis (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31). The reporting requirement shall begin on the effective date of the CONTRACT and continue for the duration of the CONTRACT term. Reports shall be submitted within 15 calendar days from the end of each reporting period.

Detailed workforce utilization reports, as required above, shall be submitted in such form and in such manner as shall be required by NYSDOT and as in accordance with Consultant Instruction 17-02.

The CONSULTANT shall include this provision in every subcontract so that such provisions shall be binding upon each subconsultant/subcontractor, of the subcontract is in excess of \$25,000.

### **ARTICLE 34 – CONFLICTS OF INTEREST**

- A. The CONSULTANT has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONSULTANT's performance of the services does not and will not create a conflict of interest with, nor position the CONSULTANT to breach any other contract currently in force with the State of New York, that the CONSULTANT will not act in any manner that is detrimental to any STATE project on which the CONSULTANT is rendering services.
- B. The CONSULTANT hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONSULTANT's satisfactory or ethical performance of duties required to be performed pursuant to the terms

of this AGREEMENT. The CONTRACTOR shall have a duty to notify the STATE immediately of any actual or potential conflicts of interest.

- C. In conjunction with any subcontract under this AGREEMENT, the CONSULTANT shall obtain and deliver to the STATE, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the sub-consultant/subcontractor. The CONSULTANT shall also require in any subcontracting agreement that the sub-consultant/subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the STATE a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its sub--consultants/subcontractors prior to entering into a subcontract.
- D. The STATE and the CONSULTANT recognize that conflicts may occur in the future because the CONSULTANT may have existing, or establish new, relationships. The STATE will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the STATE, a real or potential conflict of interest cannot be cured.
- E. For purposes of this contract, a contractor, sub-contractor, and/or sub-consultant may not concurrently provide services to both a State Safety Oversight Agency and a rail fixed guideway public transportation system (RFGPTS)(1) under the oversight of that State Safety Oversight Agency, and (2) not under the jurisdiction of the Federal Railroad Administration (FRA). The term “provide services” shall include any contract with an RFGPTS within the State of New York (Niagara Frontier, New York City Transit, and Staten Island Railroad). Accordingly, a contractor, sub-contractor, and/or sub-consultant may not maintain any contractual relationship with Niagara Frontier, New York City Transit, or Staten Island Railroad. Notwithstanding the foregoing, if a conflict of interest – which was not present, nor reasonably foreseeable, at the time of proposal – arises, such conflict of interest shall be governed by 49 CFR 674.41. If this clause contradicts any provision of Attachment 23, this clause shall take precedence.

## **ARTICLE 35 – ETHICS REQUIREMENTS**

The CONSULTANT and its subconsultants/subcontractors shall not engage any person who is, or has been at any time, in the employ of the STATE to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of STATE employees, and the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively the “Ethics Requirements”). The CONSULTANT certifies that all of its employees and those of its subconsultants/subcontractors who are former employees of the STATE who are assigned to perform services under this CONTRACT shall be assigned in accordance with all Ethics Requirements. During the term, no person who is employed by the CONSULTANT or its

subconsultants/subcontractors and who is disqualified from providing services under this CONTRACT pursuant to any Ethics Requirements may share in any net revenues of the CONSULTANT or its subconsultants/subcontractors derived from this CONTRACT. The CONSULTANT shall identify and provide the STATE with notice of those employees of the CONSULTANT and its subconsultants/subcontractors who are former employees of the STATE that will be assigned to perform services under this CONTRACT, and make sure that such employees comply with all applicable laws and prohibitions. The STATE may request that the CONSULTANT provide it with whatever information the STATE deems appropriate about each such person's engagement, work cooperatively with the STATE to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the STATE, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The STATE shall have the right to withdraw or withhold approval of any subconsultant/subcontractor if utilizing such subconsultant/subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The STATE shall have the right to terminate this CONTRACT at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

**IN WITNESS WHEREOF**, this CONTRACT No. C038057 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT, by signature below, has duly executed this CONTRACT effective the date and year first above written.

In addition to the acceptance of this CONTRACT, the DEPARTMENT certifies that original copies of this signature page will be attached to all other exact copies of this CONTRACT.

RECOMMENDED BY:  
YORK

FOR THE PEOPLE OF THE STATE OF NEW

\_\_\_\_\_  
Office of Contract Management  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Department of Transportation  
Date: \_\_\_\_\_

Consultant Certifications: I certify that all information with respect to the "Vendor Responsibility Questionnaire" submitted by (Consultant Firm Name) on \_\_\_\_ day of \_\_\_\_\_, 20\_\_ pursuant to the requirements set forth in OSC's Guide to Financial Operations is complete, true, and accurate. I additionally certify nothing has occurred since the date of that submission that would result in requiring a change or alteration to any of the answers provided on the "Vendor Responsibility Questionnaire" submitted that date.

In addition to the acceptance of this CONTRACT, I certify that all information provided to the STATE with respect to the requirements contained in State Finance Law Section §139-j & §139-k is complete, true, and accurate.

By: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
**FIRM**

\_\_\_\_\_  
**Contract Name**

ATTORNEY GENERAL

THOMAS P. DINAPOLI  
STATE COMPTROLLER

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Acknowledgment for Contract #C038057**

For contracts signed in New York State

State of New York            )

County of                       ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me the undersigned personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

My Commission Expires:

For contracts signed **outside** of New York State

State of                                )

County of                               ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual(s) made such appearance before the undersigned in

\_\_\_\_\_ (insert the city or other political subdivision and the state or county or other place the acknowledgment was taken).

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Signature and office of individual taking acknowledgment)

My Commission Expires:

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory

and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any

substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such

number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or

representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS).** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS).** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017

212-803-2414

email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) ) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health,

and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.



The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

## APPENDIX A-1

### SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **APPENDIX B**

### **REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS**

*(June 2016)*

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (NYSDOT) is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration agrees to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its Procedures for Locally Administered Federal-Aid Projects Manual (available through NYSDOT's web site at: <http://www.dot.ny.gov/plafap>). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement for Federal-aid funding or project administration that enters into Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: <http://www.fhwa.dot.gov/programadmin/contracts/1273.htm>).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

#### **NON DISCRIMINATION/EEO/DBE REQUIREMENTS**

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and United States Department of Transportation (USDOT) regulations (49 CFR Parts 21, 23, 25, 26 and 27) and the following:

1. **NON DISCRIMINATION**. No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY**. In connection with the execution of this Agreement, the Municipality/Sponsors contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to

their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3. **DISADVANTAGED BUSINESS ENTERPRISES.** In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

As a sub-recipient under 49 CFR Part 26.13, the Municipality/Sponsor hereby makes the following assurance.

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under [18 U.S.C. 1001](#) and/or the Program Fraud Civil Remedies Act of 1986 ([31 U.S.C. 3801](#) et seq.).

### **FEDERAL SINGLE AUDIT REQUIREMENTS**

Non-Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO).

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a The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

## **THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE**

The Catalog of Federal Domestic Assistance ([CFDA](#)<sup>b</sup>), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

## **THE CFDA IDENTIFICATION NUMBER**

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

**The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205.**

**Additional CFDA numbers for other transportation and non-transportation related programs are:**

<b>20.215</b>	<b>Highway Training and Education</b>
<b>20.219</b>	<b>Recreational Trails Program</b>
<b>20.XXX</b>	<b>Highway Planning and Construction - Highways for LIFE;</b>
<b>20.XXX</b>	<b>Surface Transportation Research and Development;</b>
<b>20.500</b>	<b>Federal Transit-Capital Investment Grants</b>
<b>20.505</b>	<b>Federal Transit-Metropolitan Planning Grants</b>
<b>20.507</b>	<b>Federal Transit-Formula Grants</b>
<b>20.509</b>	<b>Formula Grants for Other Than Urbanized Areas</b>
<b>20.600</b>	<b>State and Community Highway Safety</b>
<b>23.003</b>	<b>Appalachian Development Highway System</b>
<b>23.008</b>	<b>Appalachian Local Access Roads</b>

## **PROMPT PAYMENT MECHANISMS**

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<sup>b</sup> <http://www.cfda.gov/>

In accordance with 49 CFR 26.29, and NY State Finance Law 139-f or NY General Municipal Law 106-b(2) as applicable:

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

### **CARGO PREFERENCE ACT REQUIREMENTS – U.S. FLAG VESSELS**

In accordance with 46 CFR 381, the contractor agrees:

(a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners,

and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

- (b)** To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (c)** To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.



## **APPENDIX C**

### **SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS**

#### **Specific Equal Employment Opportunity Responsibilities**

**1. GENERAL** (a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Federal Executive Order 11246, Federal Executive Order 11375, and NYS Executive Law Article 15, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, by Executive Order 162, issued on January 9, 2017 and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

(b) The CONSULTANT will work with the STATE and the Federal Government in carrying out equal employment opportunity obligations and in their review of their activities under this contract.

(c) The CONSULTANT and all their sub-consultants and/or sub-contractors holding sub-contracts of \$10,000 or more will comply with the following minimum specific requirements of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to contractors and sub-contractors.) The CONSULTANT will include these requirements in every sub-contract with such modification of language as is necessary to make them binding on the sub-contractor.

(d) The CONSULTANT and all their sub-consultants and/or subcontractors shall comply with Executive Order 162, issued on January 9, 2017, requiring quarterly workforce utilization reports, detailing reports of the Consultant and all of their subconsultants, which includes in addition to equal opportunity information, the job and salary of each employee directly performing work on a State contract.

#### **2. EQUAL EMPLOYMENT OPPORTUNITY POLICY**

A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the contract.

B. In performing the contract, the Consultant shall:

1. Ensure that each Consultant and subconsultant – or subcontractor – performing work on the contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Consultant shall submit an EEO policy statement to the New York State Department of Transportation (NYSDOT) after the date of the notice by the NYSDOT to award the contract to the Consultant as determined by the Department.
3. If the Consultant or any of its subconsultants, does not have an existing EEO policy statement, the NYSDOT may require the Consultant or subconsultant to adopt a model statement consistent with item B.4.a through d of this section.
4. The Consultant's EEO policy statement shall include the following language:
  - a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce.
  - b. The Consultant shall state in all solicitations or advertisements for employees that in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, natural origin, sex, age, disability or marital status.
  - c. The Consultant shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperation the implementation of the Consultant's obligation herein.
  - d. The Consultant will include provisions of Subdivisions (a) through (c) of this subsection 4 and the paragraph appearing immediately below which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subconsultant as to work in connection with the contract. The Consultant shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Consultant and its subconsultants shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction or prior arrest.

**3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER** The CONSULTANT will designate and make known to the New York State Department of Transportation contracting officers an Equal Employment Opportunity Officer and a Minority Business Enterprise officer (hereinafter referred to as the EEO Officer and M.B.E. Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active equal employment opportunity program and who must be assigned adequate authority and responsibility to do so.

**4. DISSEMINATION OF POLICY** (a) All members of the CONSULTANT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONSULTANT's equal

employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To insure that the above agreement will be met, the following actions will be taken as a minimum:

- (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the CONSULTANT's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
  - (2) All new supervisory (first level of supervision and above) or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the CONSULTANT's equal employment opportunity obligations within thirty days following their reporting for duty with the CONSULTANT.
  - (3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official. (Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)
- (b) In order to make the CONSULTANT's equal employment opportunity policy known to all employees, prospective employees and potential sources or employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:
- (1) Notices and posters setting forth the CONSULTANT'S equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - (2) The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
- (c) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a sub-contract, including procurements of materials or equipment, each potential sub-contractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this agreement and the Regulations relative to non-discrimination.

**5. RECRUITMENT** (a) When advertising for employees, the CONSULTANT will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived. These advertisements shall state that all qualified applicants will be afforded equal employment opportunity without regard to race, religion, sex, color, national origin, age, disability or marital status.

(b) The CONSULTANT will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the CONSULTANT's EEO Officer will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the CONSULTANT for employment consideration. In the event the CONSULTANT has a valid bargaining agreement providing for exclusive hiring hall referrals, the CONSULTANT is expected to observe the provisions of that agreement to the extent that the system permits the CONSULTANT's compliance with equal employment opportunity contract provisions. (The U.S.

Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the CONSULTANT to do the same, such implementation violates Executive Order 11246.

(c) The CONSULTANT will encourage present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

**6. PERSONNEL ACTIONS** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age, disability or marital status. The following procedures shall be followed:

(a) The CONSULTANT will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(b) The CONSULTANT will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory practices.

(c) The CONSULTANT will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONSULTANT will promptly take corrective action. If the review indicated that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

(d) The CONSULTANT will promptly investigate all complaints of alleged discrimination made in connection with obligations under this agreement, will attempt to resolve such complaints, and will take appropriate corrective action within 15 days. All subsequent corrective actions or decisions will also be documented and forwarded to the NYS Department of Transportation Compliance Officer within 7 days after such action has taken place. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONSULTANT will inform every complainant of the results and all of their avenues of appeal should the complaint be denied.

**7. TRAINING AND PROMOTION** (a) The CONSULTANT will assist in locating, qualifying and increasing the skills of minority group and women employees, and applicants for employment.

(b) Consistent with the CONSULTANT's work force requirements and as permissible under the Federal and State regulations, the CONSULTANT shall make full use of training programs; i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. In the event the Training Special Provision is provided under this contract, this subparagraph is superseded thereby.

(c) The CONSULTANT will advise employees and applicants for employment of available training programs and entrance requirements for each.

(d) The CONSULTANT will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

**8. UNIONS** If the CONSULTANT relies in whole or in part upon unions as a source of employees, the CONSULTANT will use their best effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and, to effect referrals by such unions of minority and female employees. The CONSULTANT will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Division of Human Rights, advising such labor union or representative of the CONSULTANT's compliance and with the non-discrimination clauses. Actions by the CONSULTANT, either directly or through a CONSULTANT's association acting as agent, will include the procedures set forth below:

(a) The CONSULTANT will use their best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

(b) The CONSULTANT will use their best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age, disability or marital status.

(c) The CONSULTANT is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union, and such labor union refuses to furnish such information to the CONSULTANT. The CONSULTANT shall so certify to the STATE and shall set forth what efforts have been made to obtain such information. Further, if the CONSULTANT was directed to do so by the contracting agency as part of the bid or negotiations of this contract, the CONSULTANT shall request such labor union or representative to furnish him with a written statement that such labor union or representative accepts the non-discrimination clauses and will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights and set forth what efforts have been made to obtain such information.

(d) In the event the union is unable to provide the CONSULTANT with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the CONSULTANT will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age, disability or marital status, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the CONSULTANT has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the CONSULTANT from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONSULTANT shall immediately notify the New York State Department of Transportation.

**9. AFFIRMATIVE ACTION IN SUBCONTRACTING** (a) The CONSULTANT will not discriminate on the grounds of race, religion, sex, color, national origin, age, disability or marital status in the selection of subcontractors, including procurements and leases of equipment.

(b) If the CONSULTANT determines to use a subcontractor as part of this agreement, affirmative action shall be taken to increase the participation of minority business firms in that work. As part of that affirmative action,

the CONSULTANT will identify and contact minority business firms and solicit proposals for the work to be subcontracted. The STATE will provide a list of names of minority business firms to the CONSULTANT. Another source that should be contacted for a list of minority business firms is the Governor's Office of Minority & Women's Business Development (GOMWBD).

(c) The CONSULTANT will document the affirmative action steps taken to comply with paragraph 9b. Such documentation will be provided at the time of submittal of a formal proposal to the State's Contracts Bureau.

(d) By execution of this agreement, the CONSULTANT certifies that the affirmative action steps in 9a, 9b & 9c above were taken when soliciting proposals for the work in this agreement indicated to be subcontracted and that these steps will be taken should any work be subcontracted in the future.

(e) The CONSULTANT will insure binding subcontractor and vendor compliance with their EEO obligations. The CONSULTANT will take such actions in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or a vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting him to intervene and protect the interest of the State of New York.

**10. RECORDS AND REPORTS** (a) The CONSULTANT will keep such records as are necessary to determine compliance with the CONSULTANT's equal employment opportunity obligations. The records kept by the CONSULTANT will be designed to indicate:

- (1) The number of minority and non-minority group members and women employed in each work classification on the project, where required by the NYS D.O.T Compliance Officer.
- (2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
- (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
- (5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.

(b) The CONSULTANT will comply with Sections 291-299 of the Executive Law and Civil Rights Law and will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by State or Federal officials to be pertinent to ascertain compliance with such Regulations, orders and instructions. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State and the Federal Highway Administration.

(c) Failure to comply with these Special EEO Provisions may be considered unsatisfactory performance and may subject the agreement to termination under the termination article of this agreement. Non-compliance may result in the CONSULTANT's being declared ineligible for future agreements made by or on behalf of the STATE or a public authority or agency of the STATE, until he satisfies the State Commissioner of Human

Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the CONSULTANT and an opportunity has been afforded them to be heard publicly before the State Commissioner of Human Rights or official designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided for by law. These may include, but are not limited to:

- (1) withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or
- (2) cancellation, termination or suspensions of the agreement in whole or in part.

**11. TRAINING SPECIAL PROVISIONS** This Training Special Provision supersedes paragraph 7.b above and is in implementation of 23 CFR Subpart A, Section 230.111 & Executive Order 11246.

As part of the CONSULTANT's equal employment opportunity affirmative action program training shall be provided as follows:

The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved. The number of months of training to be provided under these special provisions is previously stated in Article II.

In the event that the CONSULTANT subcontracts a portion of the contract work, it shall be determined how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the CONSULTANT shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The CONSULTANT shall also insure that this training special provision is made applicable to such subcontract.

The number of trainees shall be distributed among the work classifications on the basis of the CONSULTANT's needs. Along with their proposal, the CONSULTANT shall submit to the New York State Department of Transportation for approval the proposed number of trainees to be trained in each selected classification, their estimated salaries and a training schedule. The salaries to be paid trainees shall not be less than 75 percent of the average hourly rate approved in the agreement for the classification to be trained. During the period from the beginning of the project to its completion, the trainee shall receive reasonable salary increases commensurate to the abilities and effort exerted by the trainee. The training schedule required should indicate the start of work and appropriate incremental salary steps in accord with the above.

Training and upgrading the proficiency of minorities and women is a primary objective of this Training Special Provision. Accordingly, the CONSULTANT shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The CONSULTANT will be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to a determination as to whether the CONSULTANT is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training program or in a classification in which they have been employed. The CONSULTANT should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the CONSULTANT's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training schedule developed by the CONSULTANT and approved by the State and Federal Highway Administration. The State and the Federal Highway Administration shall approve a program if it reasonably calculated to meet the equal employment opportunity obligations of the CONSULTANT and to assist in qualifying the average trainee toward proficiency in the classification concerned by the end of the training period. Approval of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. Training is permissible in lower level management positions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The CONSULTANT will be reimbursed for the cost of any and all training under the payment terms of this agreement. This can include offsite training cost as discussed above. All offsite training must be defined in the training schedule. All costs claimed or calculated for training must be directly related to the work defined in the scope of this agreement and/or added by supplemental agreement.

The CONSULTANT must demonstrate their best efforts and evidence good faith in hiring trainees for positions in the classification in which they have completed training.

The CONSULTANT shall furnish the trainee a copy of the program they will follow in the training. The CONSULTANT shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The CONSULTANT will provide for the maintenance of records and furnish periodic reports documenting their performance under this Training Special Provision.

Updated July 2017



**APPENDIX D**  
**PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES:**  
**REQUIREMENTS AND PROCEDURES**

(revised State 7-12-2017)

**I. General Provisions**

- A. The New York State Department of Transportation (NYSDOT) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (NYCRR) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The consultant to the subject contract (the “Consultant” and the “Contract” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to NYSSDOT, to fully comply and cooperate with NYSDOT in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (EEO), and contracting opportunities for New York State-certified Minority and Women-Owned Business Enterprises (MWBEs). The Consultant’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix C and such other remedies are available to NYSDOT pursuant to the Contract and applicable law.

**II. MWBE Utilization Plan**

- A. The Consultant represents and warrants that the Consultant has submitted an MWBE Utilization Plan, or shall submit a MWBE Utilization Plan at such time as shall be required by NYSDOT. The MWBE Utilization Plan is to be submitted consistent with the requirements stated in the procurement document.
- B. The Consultant agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Consultant further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such material breach, NYSDOT shall be entitled to any remedy provided herein, including but not limited to, a finding that the Consultant is non-responsive.

**III. Waivers Post Contract Execution**

- A. If the Consultant, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Consultant may submit a request for a waiver to the NYSDOT Office of Contract Management, Civil Rights Unit. Such waiver request must be supported by evidence of the Consultant’s good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, NYSDOT shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If NYSDOT, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Consultant is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, NYSDOT may issue a notice of deficiency

to the Consultant. The Consultant must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of the MWBE Contract Goals.

**IV. Liquidated Damages – MWBE Participation**

- A. Where NYSDOT determines that the Consultant is not in compliance with the requirements of this Appendix and the Consultant refuses to comply with such requirements, or if the Consultant is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Consultant shall be obligated to pay to NYSDOT liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to the MWBEs had the Consultant achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by NYSDOT, the Consultant shall pay such liquidated damages to NYSDOT within sixty (60) days after they are assessed. Provided, however, that if the Consultant has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Consultant following the complaint process.

EXHIBIT \_\_\_\_  
CDL FORM B

**FORM B**

**OSC Use Only:**

Reporting Code:  
Category Code:

**State Consultant Services  
Contractor's Annual Employment Report  
Report Period: April 1,      to March 31,**

Contracting State Agency Name: Transportation      Agency Code: 17000  
Contract Number:  
Contract Term      to  
Contractor Name:  
Contractor Address:  
Description of Services Being Provided:

**Scope of Contract (Choose one that best fits):**

Analysis ☐    Evaluation ☐    Research ☐    Training ☐  
Data Processing ☐    Computer Programming ☐    Other IT consulting ☐  
Engineering ☐    Architect Services ☐    Surveying ☐    Environmental Services ☐  
Health Services ☐    Mental Health Services ☐  
Accounting ☐    Auditing ☐    Paralegal ☐    Legal ☐    Other Consulting ☒

O*NET Employment Category Number and O*NET Job Title	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Preparer's Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Phone #: \_\_\_\_\_

Date Prepared:    /    /

**Attachment 2: Consultant Information and Certification**

**Contract Number(s): C038057**

**NYSDOT STATE SAFETY OVERSIGHT PROGRAM FOR RAIL TRANSIT AGENCIES**

**i. Consultant Information**

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Fax Number: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Email Address: \_\_\_\_\_

Contact Person Name: \_\_\_\_\_ Title: \_\_\_\_\_

Consultant's Federal Identification Number (FEIN): \_\_\_\_\_

Consultant's NYSDOT Consultant Identification Number: \_\_\_\_\_

Please indicate below the name, title, address and telephone/fax numbers of the person who prepared this Proposal, as well as any other individual(s) with authority to negotiate and contractually bind the Proposer.

Preparer's Name, Title:

\_\_\_\_\_

Address: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Fax Number: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Email Address: \_\_\_\_\_

Other Authorized Individual(s):

Name, Title \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Email Address: \_\_\_\_\_

**ii. Proposer Certifications**

**By signing below, I, \_\_\_\_\_, authorized individual of**

**(Name)**

**\_\_\_\_\_, make the following certifications regarding the  
(Proposer Name)  
subject Proposal:**

- 365-Day Offer: This Proposal is a firm offer for a 365-day period from the date of submission.
- The Proposer has read and will follow the procedure outlined in Section 7.3 of the RFP if it proposes the services of a former NYSDOT employee(s).
- ST-220: If selected for contract award greater than \$100,000, the Proposer will complete and submit the required ST-220-CA and ST-220-TD (Contractor Certifications) with the contract documents.
- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL – “Disclosure Form to Report Lobbying” in accordance with its instructions.
- As of January 1, 2019, bidders on New York State procurements subject to competitive bidding are required to submit a Certification on Sexual Harassment in bids. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace, and provides annual sexual harassment prevention training to all its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the Labor Law.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

*This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a*

*prerequisite for making or entering into this transaction imposed by 31 U.S.C §1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certifications shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.*

*The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provision of 31 U.S.C. Section 3801, et seq., are applicable thereto.*

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Name, Title:** \_\_\_\_\_

**iii. Acceptance of Contract**

By signing below, I, \_\_\_\_\_, authorized individual of  
(Name)

\_\_\_\_\_, hereby **certify that I have read and Accept**  
all

(Proposer Name)

terms and conditions contained in the Draft Contract, including Appendix A, which is included as Attachment 1 to this Request for Proposals.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Name, Title:** \_\_\_\_\_

### Attachment 3: Form AOR Acknowledgement of Receipt

#### Acknowledgment of Receipt of RFP Modifications and Questions & Answers

<b>NAME OF PROPOSER:</b>

I hereby acknowledge receipt of the NYSDOT STATE SAFETY OVERSIGHT PROGRAM FOR RAIL TRANSIT AGENCIES Contract No. C038057 Request for Proposals, dated April 11, 2022 and subsequent responses to Modifications and Questions & Answers issued by the Department, as listed below.

MODIFICATION NUMBER	DATE ISSUED BY THE DEPARTMENT

QUESTION & ANSWER NUMBER	DATE ISSUED BY THE DEPARTMENT

NAME	
TITLE	
SIGNATURE	
DATE	

## Attachment 4: Procurement Lobbying Law Compliance

### 1. Required Forms: The Proposer shall complete the following forms and include them in Part II: Cost and Administrative Proposal/Submittal.

- Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j(3) and §139-j(6)(b)  
[https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers\\_affirmation\\_and\\_agreement\\_form.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers_affirmation_and_agreement_form.pdf)
- Offerer Disclosure of Prior Non-Responsibility Determinations  
[https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offer\\_disclos\\_prior\\_non.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offer_disclos_prior_non.pdf)

### 2. NYSDOT Guidelines and Procedures

Under the requirements of the State Procurement Act all communications regarding advertised projects are to be channeled through the Office of Contract Management (\*Designated Contacts). Until a designation is made, communication with any other NYSDOT employee concerning this project that is determined to be an attempt to influence the procurement may result in disqualification.

Refer to "NYSDOT PROCUREMENT LOBBYING LAW GUIDELINES AND PROCEDURES" at [https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll\\_gandp\\_v1.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll_gandp_v1.pdf)

### 3. Summary of the policy and prohibitions regarding permissible contacts

#### 4. Contacts Prior to Designation

Any communication involving an attempt to influence the procurement are only permitted with the following Designated Contact Persons

- The Designated Office of Contract Management Specialist
- The Office of Contract Management Specialist Supervisor
- The Office of Contract Management Assistant Director
- The Office of Contract Management Director

There are some communications exempted from this restriction:

- Participation in a pre-proposal conference
- Protests, complaints of improper conduct or misrepresentation

If any other NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee. If the Department determines an impermissible contact was made, the offerer cannot be awarded the contract. A second violation would lead to a four-year bar on the award of public contracts to the offerer.

#### 5. Contacts After Designation

NYSDOT identifies the primary contract negotiations contacts, which include:



- The Designation Office of Contract Management Specialist
- The Office of Contract Management Specialist Supervisor
- The Office of Contract Management Assistant Director
- The Office of Contract Management Director
- The Program Area Project Manager
- The Program Area Project Manager's Immediate Supervisor

The law does not limit who may be contacted during the negotiation process. However, if any NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee.

6. Information required from offerers that contact NYSDOT staff, prior to contract approval by the Office of the State Comptroller.

The individuals contacting NYSDOT should refer and shall be prepared to provide the following information, either by email or fax as directed by NYSDOT:

Person's name, firm person works for, address of employer, telephone number, occupation, firm they are representing, and whether the owner, employee, retained by or designated by the firm to appear before or contact NYSDOT.

7. Applicability to an executed contract:

Restrictions similar to those described above apply to approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement or contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer. The staff noted above as well as the project manager and consultant manager are considered designated contact persons. The Department may identify other contact persons for each of these processes.

4. Rules and regulations and more information on this law, please visit:

<https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.aspx>

For more information go to the NYSDOT's website at: <http://www.dot.ny.gov> or contact:

Shalina L. Mallory

NYSDOT Office of Contract Management

50 Wolf Rd, 6<sup>th</sup> Floor

Albany, NY 12232

Telephone: (518) 457-9101

Email: [shalina.mallory@dot.ny.gov](mailto:shalina.mallory@dot.ny.gov)

**Attachment 5: Consultant Disclosure Legislation Forms A&B**

**OSC Use Only:**

Reporting Code:

Category Code:

Date Contract

Approved:

**FORM**

**A**

State Consultant Services – Contractor's Planned Employment  
From Contract Start Date Through The End Of The Contract Term

State Agency Name: Transportation

Agency Code: DOT01

Contractor Name:

Contract Number:

Contract Start Date: / /

Contract End Date: / /

O*Net Employment Category	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared: / /

(Use additional pages, if necessary)

Page of

## FORM B

**OSC Use Only:**

Reporting Code:

Category Code:

**State Consultant Services  
Contractor's Annual Employment Report**

**Report Period: April 1,                      to March 31,**

Contracting State Agency Name: Transportation

Agency Code: DOT01

Contract Number:

Contract Term to

Contractor Name:

Contractor Address:

Description of Services Being Provided:

**Scope of Contract (Choose one that best fits):**

Analysis ☐ Evaluation ☐ Research ☐ Training ☐

Data Processing ☐ Computer Programming ☐ Other IT consulting ☐

Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services ☐

Health Services ☐      Mental Health Services ☐

Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting ☒

O*NET Employment Category Number and O*NET Job Title	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Preparer's Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Phone #: \_\_\_\_\_

Date Prepared:     /     /

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Use additional pages if necessary)

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Page
of

**Attachment 6: Non-Collusive Bidding Certification**

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF  
THE FINANCE LAW**

Section 139-D, Statement of Non-Collusion in bids to the State:

**BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF A JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:**

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

**A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE: [1], [2], AND [3] ABOVE HAVE NOT BEEN COMPLIED WITH, PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDERS CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE .**

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT]

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ as the act and deed of said corporation of partnership.

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF  
THE FINANCE LAW**

**IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:**

<b>NAMES OF PARTNERS OR PRINCIPALS</b>	<b>LEGAL RESIDENCE</b>

---

**IF BIDDER(S) ARE A CORPORATION, COMPLETE THE FOLLOWING:**

<b>NAME</b>	<b>LEGAL RESIDENCE</b>
<b>President:</b>	
<b>Secretary:</b>	
<b>Treasurer:</b>	
<b>President:</b>	
<b>Secretary:</b>	
<b>Treasurer</b>	

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF  
THE FINANCE LAW**

**Identifying Data:**

Potential Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_-\_\_\_\_ Email Address: \_\_\_\_\_

If applicable, Responsible Corporate Officer:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Joint of combined bids by companies or firms must be certified on behalf of each participant

Legal Name of Person, Firm or Corporation

Legal Name of Person, Firm or Corporation

\_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

City, State: \_\_\_\_\_

City, State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Zip Code: \_\_\_\_\_

## **Attachment 7: Vendor Assurance of No Conflict of Interest or Detrimental Effect**

The Firm offering to provide services pursuant to this RFP, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this RFP does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflicts of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
5. During negotiations and execution of any contract resulting from this RFP, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole, including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is not employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate Section 73(8)(a) of the State Ethics Law; and
8. The firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or

could reasonably be expected to influence said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms responding to this RFP should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgement, a real potential conflict of interest cannot be cured.

Firm Name: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

This form must be signed by an authorized executive or legal representative.



**Attachment 8: Executive Order 177 Certification**

This Certification must be completed and returned with the executed contract documents.

**EXECUTIVE ORDER 177**

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodations for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require a reasonable accommodation in employment on the basis of Sabbath observances or religious practices.

Generally, the Human Rights Law applies to:

- All employers of four or more people, employment agencies, labor organizations and apprenticeships training programs in all instances of discrimination or harassment;
- Employers with fewer than four employees in all cases involving sexual harassment; and
- Any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Proposal/Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including, but not limited to, the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Proposer: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Attachment 9: Executive Order No. 14 and Executive Order No. 16 Certification

Contract/Procurement #

NEW YORK STATE DEPARTMENT of TRANSPORTATION  
Purchasing Unit • Office of Contract Management •  
Office of Right of Way • Division of Policy & Planning

### Executive Order 14 and Executive Order 16 Certification

**This certification is required from all Offerors, Bidders, Contractors and Sponsors prior to contract / agreement execution.**

New York State Executive Order No. 14 directs State Entities, to the extent practicable, to divest their money and assets and terminate contracts with institutions or companies headquartered in Russia or with their principal place of business in Russia, “protecting New York from financing discrimination against the Ukrainian people”. New York State Executive Order (herein, “Executive Order”) No. 16 directs State Entities to refrain from entering into any new contract or renewing any existing contract with an Entity conducting business operations in Russia until such time as sanctions imposed by the federal government are no longer in effect.

For purposes of this certification, and as set forth in Executive Order No. 16, an “Entity conducting business operations in Russia” means “an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.”

Notwithstanding the foregoing, an Affected State Entity may contract with an Entity conducting business operations in Russia provided that the head of the Affected State Entity makes a determination in writing that the investment or contract is necessary for the Affected State Entity to perform its functions and that no suitable investment or contractual alternatives exist.

In accordance with Executive Order No. 14 and Executive Order No. 16 (collectively, “the Executive Orders”), specific to the bid or proposal submitted for the above referenced contract or solicitation, and as evidenced by signature affixed hereto, Offeror/Bidder/Contractor (or any assignee) certifies they: (1) are not an Entity conducting business operations in Russia, (2) are not conducting, will not conduct, and will not engage any such company that conducts, commercial activity with (a) the Russian Government, and (b) commercial entities headquartered in Russia or with their principal place of business in Russia, in the form of contracting, sales, purchasing, investment, or any business partnership.

NYS DOT reserves the right to reject any bid, proposal, grants or request for assignment of any Offeror / Bidder / Contractor / Sponsor, and to pursue a responsibility review with respect to any entity that is awarded a contract, if found to be in violation of this Certification or the Executive Orders.

Offeror / Bidder / Contractor / Sponsor [Company Name]:

By [signature]: \_\_\_\_\_

Name [print]:

Title:

Date: \_\_\_\_\_, 20

*This certification must be signed by an authorized executive or legal representative*

## Attachment 10: DBE Participation Information

In accordance with the Code of Federal Regulations (CFR), Title 49, Part 26, NYSDOT is required to encourage Proposers to utilize Disabled Business Enterprises (DBE) in procurements that receive federal funds.

Please complete the following table for the prime firm and all subconsultants (consultant team composition). Please identify each firm's legal name, checking if they are certified DBE by utilizing the NYSUCP DBE Directory, and indicating each firm's percentage of total cost for the contract. Please keep in mind that only NYSUCP certified DBEs are eligible to count towards attainment of this federally funded procurement with a DBE participation goal. **Proof of certification must also be submitted with Attachment 10.**

Further, participation by a certified DBE prime consultant will count towards DBE participation and goal attainment.

If the combined percentage of total contract value for all proposed, certified DBEs is less than the DBE Participation Goal set for this contract, then the proposing prime firm is required to fill out and submit the **Subconsultant Participation Solicitation Log (Attachment 10a)** and a **Goal Attainment Explanation Letter**. Further, the prime consultants certified as a DBE who propose to meet the Department's DBE participation goal via their meaningful participation, are required to complete and submit the **Subconsultant Participation Solicitation Log (Attachment 10a)** if their outreach efforts result in proposed DBE subconsultant(s).

Please provide a copy of the firm's DBE letter from a NYSUCP certifying partner with your Part II: Cost and Administrative Proposal/Submittal.

Contract No.: C038057

Firm Legal Name	NYSUCP Certified DBE		% of Total Contract Value
	DBE	NONE	
Prime:			
Subconsultants:			
Total			100%

**Attachment 10a: DBE Subcontractor Participation Solicitation Log**

Contract No. _____		Participation Goals DBE% _____		Page Number ____ of ____	
Prime Firm Name/Address/Zip Code		Contact Person		Telephone Number (Including Area Code)  Email Address	
Solicited Company Name and Contact Person	Telephone Number (With Area Code)	Federal Employer ID Number (FEIN)	Work Types Being Solicited (enter work types or CUF)	Types and Dates of Contacts	Contact Result(s) Code

\*See Attachment 12: Solicitation Log Instructions

**Attachment 11: M/WBE/SDVOB Participation Information**

Not Applicable

**Attachment 11a: M/WBE/SDVOB Subconsultant Participation Solicitation Log**

Not Applicable

**Attachment 12: Solicitation Log Instructions**  
**(Good Faith Effort Documentation)**

To be deemed responsive to this solicitation, Consultants whose proposed D/M/WBE/SDVOB participation does not meet the established participation goal(s) must document and report their efforts to solicit participation by certified D/M/WBE/SDVOBs in this Non-Architecture/Non-Engineering Contract. The **Subconsultant Participation Solicitation Log** is used for this purpose.

**PLEASE NOTE: For RFPs with a DBE goal, only participation by a NYSUCP certified DBE prime consultants/subconsultants may count towards goal attainment. For RFPs with MBE, WBE and or SDVOB goals, only prime consultants/subconsultants certified by New York State Empire State Development and/or New York Office of General Services SDVOB Program may count towards goal attainment.**

Guidance concerning Good Faith Efforts in meeting D/M/WBE/SDVOB participation goals(s) is located at the end of this section.

The log is to be filled out and submitted in Part II: Cost and Administrative Proposal/Submittal. In order for a Proposal to be determined as representative when the D/M/WBE/SDVOB participation goal is not attained at all or only partially attained, then the Proposer must complete all sections of this form and submit with a **Goal Attainment Explanation Letter**, documenting the firm's Good Faith Effort. A separate Subconsultant Participation Solicitation Log must be submitted for each Participation Goal established in the RFP.

***\*\*DBE CERTIFICATION IS A FEDERAL PROGRAM CERTIFICATION\*\*\* IT IS SEPARATE AND DISTINCT FROM THE NEW YORK STATE MBE & WBE OR SDVOB PROGRAMS. PLEASE DO NOT CONFUSE THE TWO. FIRMS WITH QUESTIONS REGARDING THESE PROGRAMS ARE ENCOURAGED TO SUBMIT WRITTEN QUESTIONS.***

**Contract No.:** C038057

**Participation Goal:** Enter applicable D/M/WBE/SDVOB participation goal percentage stated in the RFP.

**Page No.:** Enter 1 of 1, 1 of 2, 2 of 2, etc. Use additional forms as needed.

**Prime Name/Address/Zip Code:** Enter the name of the Prime Consultant, its address and zip code.

**Contact Person:** Enter the name of the person your firm has designated as the authorized contact person for this solicitation.

**Contact Person Telephone and Email:** Enter the telephone number (including area code) and email for the person your firm has designated as the authorized contact person for this solicitation.

**DBE/MBE/WBE/SDVOB Consultants Solicited**

**Solicited Company Name and Contact Person:** Enter name of solicited firm and name of the individual associated with the firm to whom the solicitation inquiry was sent.

**Telephone (with Area Code):** Enter the telephone number of the solicited firm.

**Federal Employer ID#:** Enter the Federal Employer Identification Number of the solicited firm.

**Work Type(s) Being Solicited:** Enter the work type(s) or Commercial Useful Function for which the firm has been solicited in connection with the Scope of Services for this contract. NOTE: Work type codes are provided for every certified firm listed in the DBE registry. Commodity type codes are provided for every firm listed in the ESD M/WBE Registry.

**Types and Dates of Contact:** Enter the dates on which your firm contacted the solicited firm, either by mail/email (dates solicitation sent), telephone (including date and time of call), or other person-to-person contacts. Identify the type of contract by prefacing each date with “M” if a mail contact, “E” if email contact, “T” if telephone contact, and “D” if a direct meeting with the firm.

**Contact Rules:** Enter the code(s) which indicates the result(s) of your solicitation.

**\*\*Use additional pages as needed\*\***

**Code Descriptions:**

1. This firm is unavailable to participate in the contract for the reason(s) states on the DBE or M/WBE/SDVOB Solicitation Response. (Attach explanation to the Log)
2. This firm is no longer in business (NOTE: if this action is checked, attach your explanation as to why the solicitation was sent to the firm and how evidence that it was no longer in business was obtained. Attach the returned envelope/email showing that it was undeliverable, for instance).
3. The soliciting Prime Consultant was unable to reach this firm after having a telephone conversation to follow-up on the participation solicitation inquiry. (NOTE: Indicate in the Types and Date of Contact column the dates and types at which follow-up was attempted)
4. This firm did not respond to repeated telephone messages. (NOTE: Indicate in the Types and Dates of Contact column the dates and times at which messages were left)



## Guidance Concerning Good Faith Efforts in Meeting D/M/WBE/SDVB Participation Goals

The following is a list of types of actions that demonstrate good faith efforts in obtaining D/M/WBE/SDVOB participation. This list is not exclusive or exhaustive. The Proposer must show that it took all necessary and reasonable steps to achieve a D/M/WBE/SDVOB goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient D/M/WBE/SDVOB participation, even if they were not fully successful.

- Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, utilizing the NYSUCP directory (<https://nysucp.newnycontracts.com>), EDS directory (<https://ny.newnycontracts.com>), or NYS OGS list of certified SDVOBs (<https://online.ogs.ny.gov/sdvob/search>) who have the capability to perform the work of the contract. The Proposer must solicit this interest within sufficient time to allow the D/M/WBE/SDVOBs to respond to the solicitation. The Proposer must determine with certainty if the D/M/WBE/SDVOBs are interested by taking appropriate steps to follow-up initial solicitations.
- Selecting portions of the work to be performed by D/M/WBE/SDVOBs in order to increase the likelihood that the D/M/WBE/SDVOB goal(s) will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facility D/M/WBE/SDVOB participation, even when the Proposer might otherwise prefer to perform these work items with its own forces.
- Negotiating in good faith with interested D/M/WBE/SDVOBs – it is the Proposer’s responsibility to make a portion of the work available to D/M/WBE/SDVOB subconsultants and suppliers and to select those portions of the work or material needs consistent with the available D/M/WBE/SDVOB subconsultants and suppliers, so as to facilitate D/M/WBE/SDVOB participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of D/M/WBE/SDVOBs that were considered, a description of the information provided regarding the plans and specifications for the work selected for subcontracting, and evidence as to why additional agreements could not be reached for D/M/WBE/SDVOBs to perform the work.
- A Proposer using good business judgment should consider a number of factors in negotiating with subconsultants, including D/M/WBE/SDVOB subconsultants, and would take a firm’s price and capabilities. The Consultant’s standing within industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union versus non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Consultant’s efforts to meet the project goals.
- Making efforts to assist interested D/M/WBE/SDVOBs in obtaining bonding, lines of credit, or insurance as required by the recipient or contract.
- Making efforts to assist interested D/M/WBE/SDVOBs in obtaining necessary equipment, supplies, materials or related assistance or services.
- Effectively using the services of available minority/women-community organizations. Minority/women-contractor’s groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of D/M/WBE/SDVOBs.

### **Attachment 13: New York Business Reporting**

Not Applicable

**Attachment 14: Diversity Practices Questionnaire**

Not Applicable

## Attachment 15: Key Personnel References

### Instructions:

- Complete one Attachment 15 for each Key Personnel title identified in the RFP.
- Attachment 15 shall not exceed three (3) double sided pages for each Key Personnel.
- Proposer's may expand the boxes as necessary.
- The term "Client" below refers to the past project owner. "Client" is NOT a Prime Contractor where the proposing firm acted in the capacity as a Subcontractor.

1. Personnel Name and Title	
2. Title Assigned for this Project	
3. Firm working for on this Project	
4. Current Employment Status	<input type="checkbox"/> Employed by Firm identified in #3 above <input type="checkbox"/> Employed by a different Firm <input type="checkbox"/> Unemployed
5. Years of Relevant Experience	
6. Description of Relevant Experience	
7. Certification/Licenses	
8. Education	
9. Past Project Experience	Complete below for a maximum of 5 past projects
9.1 Project Description #1 (include contract number where appropriate)	
9.2 Client Name	
9.3 Client Contact Information (including contact name, phone number, and email address)	
9.4 Description of person's role and responsibilities during project	
10.1 Project Description #2 (include contract number where appropriate)	
10.2 Client Name	
10.3 Client Contact Information (include contact name, phone number, and email address)	
10.4 Description of person's role and responsibilities during project	
11.1 Project Description #3 (Include contract number where appropriate)	
11.2 Client Name	
11.3 Client Contact Information (include contact name, phone number, and email address)	
11.4 Description of person's role and	

responsibilities during project	
12.1 Project Description #4 (include contract number if appropriate)	
12.2 Client Name	
12.3 Client Contact Information (include contact name, phone number, and email address)	
12.4 Description of person's role and responsibilities during project.	
13.1 Project Description #5 (include contract number if appropriate)	
13.2 Client Name	
13.3 Client Contact Information (include contact name, phone number, and email address)	
13.4 Description of person's roles and responsibilities during project	

## **Attachment 16: Contract Job Title Descriptions & Qualifications**

### **Qualifications:**

The qualifications and prior experience of the proposer are of great importance to NYSDOT. Direct or prior experience in State Safety Oversight of legacy rail transit agencies is required. Prior experience in State Safety Oversight of New York City Transit is highly desirable. Provide a list of projects currently in progress and those completed within the last three years which are relevant to this effort (up to five years is allowable if relevant).

The Consultant shall be knowledgeable of the Technical Training requirements under Part 672. The proposer is required to demonstrate that all personnel who will be working on this NYSDOT contract have successfully completed or are in the process of completing the core courses (based on course offerings). This excludes administrative staff that are not directly involved in State Safety Oversight activities. The required curriculum under Part 672 is as follows:

- (a) One (1) hour course on SMS Awareness - e-learning delivery (all required participants)
- (b) Two (2) hour courses on Safety Assurance - e-learning delivery (all required participants)
- (c) Twenty (20) hours on SMS Principles for Transit (all required participants)
- (d) Sixteen (16) hours on SMS Principles for SSO Programs (FTA/SSOA/contractor support personnel only)
- (e) TSSP curriculum (minus Transit System Security (TSS) course) (all required participants - credit will be provided if participant has a Course Completion Certificate of previously taken TSSP courses)
  - (i) Rail System Safety (36 hours)
  - (ii) Effectively Managing Transit Emergencies (32 hours)
  - (iii) Rail Incident Investigation (36 hours)

The successful consultant must provide copies of completed course work and a schedule of course work to be completed pursuant to the certification requirements under the Public Transportation Safety Certification Training Program (PTSCPT). Such evidence of schedule may include a Technical Training Plan (TTP), Individual Training Plan (ITP), Transit Safety and Security Program Certificate for the Transit Rail Program (TSSP-Rail), or a Transportation Safety Institute Transcript.

List each individual's relevant qualifications; availability for the term of the contract; familiarity with and understanding of FTA and NYSDOT programs, policies, and procedures; list previous relevant experience on similar projects. In addition, the proposal must clearly identify each

individual assigned to this project, including those working for any sub-consultants. Experience that is not directly related or comparable to the RFP's objectives and/or Scope of Services will not be evaluated.

### **Contract Job Title Descriptions:**

**Project Manager:** Minimum of 10 years of relevant rail transit experience including but not limited to accident and hazard investigations, program standard development and documentation, public transportation agency safety plan development and implementation, capital project safety certification and modification of rail fixed guideway passenger transportation systems, auditing of safety systems, Federal Transit Administration reporting requirements, Public Transportation Safety Certification Training Program (PTSCTP), and a strong understanding of car equipment operations and maintenance, track operations and maintenance, signal systems operations and maintenance,

**Engineer:** Minimum of 5 years of relevant rail transit experience including but not limited to subject specific operations including but not limited to car equipment operations, signal systems, track installation and maintenance, design and construction of capital project safety oversight processes and all aspects of hazard analysis related to each operation. Individual should be able to provide an engineering perspective for addressing risk and removing hazards throughout the program.

**Inspectors:** Minimum of 5 years of relevant experience in one of the following fields: rail transit system specific operations and operations communications; car equipment operations and maintenance; track installation and maintenance; signal installation and maintenance; or 3rd rail and Catenary operations and maintenance. The individual shall monitor the conditions of the specific field stated above for compliance with maintenance and operating standards. The individual shall prepare reports concerning findings and recommendations. The individual may evaluate capital projects/improvements as a subject matter expert to ensure safety effectiveness and compliance with standards.

**Principal Analyst:** Minimum of 3 years of relevant rail transit experience including but not limited to conducting safety and security audits, analyzing accident, hazard data derived from rail transit experiences (events and operations) and conducting safety risk monitoring field visits, strong understanding of car equipment operations and maintenance, track operations and maintenance, signal systems operations and maintenance. The Principal Analyst shall have excellent written and communication skills with the ability to conduct and write independent investigations and reports, develop status reports, and schedules.

## **Attachment 17: Scope of Services Detailed Task Descriptions**

### **1. Task 1: STATE SAFETY OVERSIGHT PROGRAM STANDARD (SSOPS) MANAGEMENT**

The State Safety Oversight Program Standard (SSOPS) consists of the main body and a reference guide that contains processes and procedures. The Consultant shall be knowledgeable with Part 674.27. The following activities shall be performed:

#### **a. Review SSOPS periodically and on an annual basis**

As the program matures, the need for updating the SSOPS and processes will exist. At a minimum a review of the whole document (Standard body and reference guide) shall be performed. Review shall be done on an as-needed basis and at a minimum, annually.

#### **b. Develop/modify processes on an as needed basis**

In addition to reviewing the PTSB SSOPS, processes and procedures shall be reviewed. The review shall ensure all procedures are up to date with current practices and the standard's regulatory requirements and expectations applies.

#### **c. Send Changes to RTA's as well as letters for approval**

Once the annual review is complete, the Consultant shall notify the RTAs of any changes to the process, procedures, and standard. The notification is done via a formal letter citing the change. Any administrative change will be reviewed and by the RTA for concurrence. If a significant change is needed, the RTA will submit to the RTA board for approval. The Consultant will assist If there are any significant changes to help answer any questions or concerns from the RTA's as they present the changes to the RTA board for approval.

### **2. TASK 2: TRIENNIAL AUDITS**

The consultant shall provide support to PTSB to perform audits on the properties, assist with 3-year FTA audit, and monitor the internal audit process of NYCT and NFTA. The following activities shall be performed by the Consultant: The Consultant shall be responsible for communicating the audit status with each of the properties, developing checklists, developing document requests, meeting questions, developing recommendations & findings. The Consultant shall support PTSB during the FTA audit process by gathering requested documents. Throughout the audit, the Consultant shall provide technical/detailed discussions. In addition, the Consultant shall have a thorough understanding of Part 674.31.

#### **a. Triennial Audits for RTA's**

Under this activity, the Consultant shall have knowledge of Part 674.31. Every 3-year cycle, each RTA shall be audited. NFTA is scheduled to have the next audit in the Spring of 2024 and NYCT is scheduled for Summer of 2024. The consultant may conduct the Audit over the 3-year period if so desired. As part of the audit process the following at a minimum, shall be required:



- Communicate with RTA's status of audit  
The Consultant shall communicate with the RTA personnel at the start of the audit. The Consultant shall provide the expectations and general schedule. As the audit progresses, the Consultant shall update the audit team, the RTA with any changes or modifications.
- Develop checklists, document lists, meeting questions  
Prior to the start of the audit, the Consultant will develop the document list to be requested, develop checklists based on the subjects of the audit, and develop questions that will be used during the meetings with the different groups from the properties.
- Conduct documents review  
The Consultant shall review the documents requested to ensure compliance with the RTA's ASP. The review should note any non-compliant documents and explanation.
- Conduct interviews/meetings  
The Consultant shall participate in meetings scheduled with the different department representatives. During the meetings, the Consultant shall use the questions developed to determine compliance with the RTA ASP.
- Develop any findings and recommendations  
Once the Audit has been completed, The Consultant shall develop findings and recommendations that were found during the audit process.
- Communicate with RTA's findings and corrective actions  
The Consultant shall participate in meetings to discuss the findings and recommendations of the audit with the RTA. The consultant shall work with the RTA to develop corrective actions. The Consultant shall continue to work with the RTA to monitor the progress and status of the corrective actions up to closure.

**b. FTA SSO Audit**

This activity requires the Consultant to participate in the audit process initiated by the Federal Transit Administration. The Consultant shall have a thorough understanding of 674.11 to ensure the State is meeting minimum program requirements. The Consultant shall support PTSB staff through the various duties listed below.

- Communicate with FTA  
Throughout the audit process, the Consultant may be asked to communicate with the FTA audit team to ensure deadlines are met and requests are fulfilled.
- Compile data for submission to FTA  
The Consultant shall assist PTSB staff to compile requested documents. As part of compiling the documentation, the Consultant may be required to transmit documents.
- Respond to FTA requests  
The Consultant shall assist PTSB staff during the audit process when FTA has requests. The Consultant shall be required to respond if and when needed.
- Respond to FTA findings and recommendations

At the end of the audit, the Consultant shall assist PTSB staff with any responses needed when the findings and recommendations are presented to PTSB staff.

- Participate in Meetings and interviews

Throughout the audit process, The Consultant shall be present during the meetings and interviews in order to assist to PTSB. The consultant shall take and prepare notes.

- Develop and Track Corrective Actions

The consultant shall assist to PTSB to develop any corrective actions in response to any findings or recommendations.

**c. RTA Internal Audit Process (per the PTASP)**

Under this activity, the consultant shall have thorough knowledge of 674.27. Internal audits performed by the RTA's are to ensure that the agency is following their safety program documentation when they are performing activities.

- Ensure RTA is following ASP when auditing

The Consultant shall assist PTSB staff to ensure RTAs are following requirements set forth by PTSB in the SSOPS. The Consultant may be asked to assist the RTA with the audit process. This includes but not limited to provide technical assistance with groupings, checklists, questions, and audit subjects. The Consultant may be asked to aid with tracking the internal audit corrective actions.

- Attend RTA's internal audit meetings and interviews

The Consultant may be asked to attend the internal audits in order to follow along with the agency. The Consultant shall provide expertise to the RTA when questions arise about complex safety issues.

- Follow the Corrective Actions developed from the Internal Audit process. Corrective actions developed from internal audits should be followed and tracked to closure. The Consultant shall follow the process as per the PTSB SSOPS.

**3. TASK 3: ANNUAL REPORTING REQUIREMENTS**

Under this activity, the Consultant shall have thorough knowledge of 674.13 and 674.39 to assist PTSB in completing the Annual reporting requirements. PTSB submits data related to the FTA annual report into the State Safety Oversight Reporting (SSOR) tool. Once the data has been submitted, PTSB submits a summary report to the Governor, the Rail Transit Agency Board of Directors and the FTA. The Consultant shall assist PTSB with miscellaneous reports. Periodically, reports may be requested from PTSB staff management or PTSB Board.

**a. Compile and submit data required for FTA annual report by required time**

The Consultant shall have thorough knowledge of 674.39 in order to compile and enter the data into the SSOR.

**b. Compile and develop annual report for PTSB and Governor, RTA Board of Directors and FTA**

The Consultant shall have thorough knowledge of 674.13 to assist PTSB with the annual program report. This assignment includes but not limited to collecting facts and figures from the previous year, preparing the status report and preparing a cover letter for the Governor and the RTA's.

**c. Compile and develop any reports needed throughout the year**

The Consultant shall assist the PTSB by developing any reports that may arise through requests from PTSB management, PTSB Board members, FTA, etc.

**d. RTA PTASP annual review**

Under this activity, the Consultant shall assist the PTSB by reviewing the RTA's ASP. The Consultant shall have a thorough understanding of Part 673. The RTA will review the ASP from the previous year and then submit to the PTSB for approval.

- Conduct a Review of ASP

The Consultant shall review the ASP submitted by the RTA by using an ASP checklist. The checklist is based on requirements and guidance developed by the FTA.

- Communicate with RTA's

The Consultant shall communicate with RTA staff responsible for developing and modifying the ASP. The Consultant shall convey any issues or approval of the ASP in order for the RTA to make modifications or continue the approval process.

- Develop approval letters

The Consultant shall develop letters to notify the RTA that PTSB approves the ASP.

**4. TASK 4: SAFETY RISK MONITORING & ACCIDENT INVESTIGATION**

The Consultant shall perform safety risk monitoring and Accident investigation in order to assist PTSB. The Consultant shall have thorough knowledge of Part 674. Safety Risk Monitoring activities are to ensure the RTAs are identifying risk, assessing risk, and mitigating risk. Risk monitoring is done through independent inspections and investigations, data analysis performed on performance measures, and information collected by the RTA (Information including but not limited to performance measures, results from investigations and site visits, and audit results). Under this task, the Consultant shall assist PTSB with meeting the requirements resulting from the FTA special advisory currently being developed as a result of the Infrastructure Investment Jobs Act.

**a. Review of risk monitoring data and information**

The Consultant shall assist PTSB by reviewing data and information developed by the RTA in order to proactively identify risk that may indicate future safety concerns. The Consultant shall monitor and analyze RTA provided data products to identify potential hazards. The data includes but is not limited to hazard lists, daily logs, near miss data, internal audits, investigation findings, inspections (e.g. track inspection, station condition inspection), etc.

- Develop Risk Monitoring Topics

As an outcome of the review, the Consultant shall develop a Risk Monitoring Topic document that can be referenced. This document should be updated regularly as topics are prioritized, added or changed.

- Monitor events and activities at RTAs through the RTA developed information mentioned above
- Monitor the RTA corrective action process
- Fill out CAP checklists if needed

**b. Review Accident Investigations**

Accident investigation The Consultant shall review accident investigations performed by the RTA's. The review may be done by subject matter experts in order to determine the thoroughness and completeness of the investigation. The Consultant may also be requested to be on scene to conduct accident investigations on behalf of PTSB for major events.

- Complete Investigation Checklists

If needed the Consultant shall complete the investigation checklist. The Consultant shall use an investigation checklist to determine if the investigation is complete. Further information may be needed for determination by requesting information from the RTA.

- Write Investigation reports if needed

The consultant shall provide assistance to PTSB to write investigation reports if needed. These reports are developed from the initial RTA investigation and is summarized and presented to the PTSB board for review and approval.

**c. Prepare materials and conduct meetings with RTA's**

The Consultant shall participate/conduct meetings with the RTA to discuss Risk Monitoring Topics in order to assess how the RTA is managing risk.

- Develop and prepare agendas, presentations, and questions

The Consultant shall develop agendas and any questions to share with the RTAs prior to the meetings in order to have a productive meeting.

- Take and prepare notes

The Consultant shall take notes of the meetings. Notes will then be developed and shared with meeting participants to ensure accuracy.

- Develop RFI's

If needed, the Consultant shall develop RFI's that are a result of the meeting.

**d. Field visits to conduct risk monitoring (including Hazard Assessment) and Risk Based Inspections**

The Consultant shall provide assistance to PTSB by conducting Risk Monitoring site visits to the RTA properties. Based on the Risk Monitoring Topics documents, site visits will be conducted to assess existing conditions. These visits may serve as a way to gather information for auditing purposes as well as an opportunity to observe how

a RTA's processes deal with safety and risk. If needed, the Consultant shall conduct risk based and performance inspections for PTSB.

- Risk Monitoring Schedule Development

The Consultant will develop a tentative schedule of Risk Monitoring visits to cover at least 6 months in advance

- Conduct Risk Monitoring Site Visits

The Consultant shall prepare any supporting documents prior to on-site visits, prepare any questions and attend the visits with PTSB staff. The Consultant shall adhere to the safety rules that the RTA has in place during the visit.

- Under the 2021 Infrastructure and Jobs Act, FTA will be issuing a special directive a year after the passage of the legislation that will give authority to conduct Risk Based Inspections. Once the directive has been issued and the risk-based inspection expectations have been defined by the FTA, it is expected that the Consultant shall develop or modify the Risk Monitoring Process in place if needed. The Consultant shall assist PTSB to meet the requirements set forth in the special directive.

- Develop field notes

The Consultant shall develop field notes for every visit in order to and any RFI's resulting from field visits

- Notes will be shared with the appropriate people at the property for review and correctness
- The Consultant shall use the notes to continue to revise, build, and mature the risk monitoring process and develop site visits and if needed, risk-based inspections.

**e. Capital Projects Monitoring**

The Consultant shall assist PTSB with monitoring an RTA's capital projects. Capital projects monitoring shall include but not limited to reviewing the RTA safety plan for capital projects, ensure that the RTA is complying with the safety plans, and concurring with the RTA safety certification. All projects will be followed. Projects will be assessed to determine how they are tracked and to what degree as per the process described in the SSOPS and related documents.

- Follow capital projects

The Consultant shall follow capital projects through various means. The following methods of monitoring include but not limited to:

- Conduct meetings with appropriate RTA staff to get detailed information
- Review or Attend project meetings to obtain project updates
- Review meeting minutes of various meetings such as executive meetings that relate to projects
- Request project related information to ensure the safety plan is being followed by the RTA

- Conduct site visits on certain projects

As certain projects progress, site visits to the projects may be appropriate to verify progress. The Consultant shall assist PTSB visiting projects during different phases.

- Certification Process

The Consultant shall provide SMEs to ensure that the RTA is following the safety certification process as described in the ASP.

- Ensure documentation is correct for concurrence

## **5. TASK 5: SUPPORTING SAFETY ACTIVITIES**

The Consultant shall assist PTSB with various supporting safety activities ranging from training to special projects. The intent of this task is to cover miscellaneous activities that may not fall under the previous tasks.

### **a. Training**

The Consultant shall have knowledge of 49 CFR part 672. The Consultant shall assist PTSB to ensure staff stays current with all related training as required under 672. The technical training plan shall be reviewed periodically to ensure the curriculum is current and relevant.

- Refresher training

The Consultant shall provide refresher training to satisfy 672.11 once staff has received their Public Transportation Safety Certification Training Program (PTSCTP) certification

- The Consultant shall develop, review, and update refresher training if needed.

- Supplemental Training

The Consultant shall ensure the Technical Training Plan (TTP) curriculum is current and relevant as described in 672 Appendix A. The technical training plan shall be reviewed periodically. The Consultant shall provide training to staff when needed to satisfy the plan

- The Consultant shall review and update the TTP curriculum

### **c. Respond to FTA inquiries**

The Consultant shall assist the PTSB with inquiries from the FTA. FTA often reaches out to PTSB with requests and/or questions. If needed, the Consultant shall gather information related to the inquiry or request.

### **d. Meet periodically with PTSB staff**

The Consultant shall meet with PTSB staff on a regular basis. Meetings shall be required to update PTSB oversight staff with current status, updates on assignments, etc. The Consultant shall be responsible for developing the agenda and taking notes during the meeting. Meetings may be conducted virtually as well as in-person.

- Bi-weekly meetings

At a minimum, PTSB staff shall meet to discuss current events every other week. Exceptions will be made when schedules conflict or staff availability is low.

- Manager/Consultant meetings

The Consultant shall meet with PTSB management on a regular basis in order to determine assignments, goals, and updates to current workload.

**e. Special Inspections and Reports requested by PTSB staff or PTSB related to the RTA's**

The Consultant shall assist PTSB when PTSB or other entities request special projects be performed. Inspections or reports may include but not limited to the following: investigations performed by NTSB, Federal government audits, Internal RTA investigations, etc. The consultant shall provide subject matter experts to assist and report back in the form of a written report and or a presentation.

### **Attachment 18: Cost Proposal Workbook**

Attachment 18, which contains the RFP's Cost Proposal workbook and instructions, is to be downloaded from the NYSDOT project web site, located at <https://www.dot.ny.gov/business>. Click on "Consulting Services", then click on "Opportunities", and then click on the **date** to the left of "NYSDOT State Safety Oversight Program for Rail Transit Agencies." There is one Attachment 18: Cost Proposal Workbook for Contract #C038057.

### **Attachment 19: New York State Department of Transportation (NYSDOT) Public Transportation Safety Board (PTSB) Rail Transit State Safety Oversight (SSO) Program Standard (PDF)**

Attachment containing the RFP's Additional Project Specific Information can be found on the NYSDOT project web site, located at <https://www.dot.ny.gov/business>. Click on "Consulting Services", then click on "Opportunities", and then click on the **date** to the left of "C038057 NYSDOT State Safety Oversight Program for Rail Transit Agencies".

### **Attachment 20: Public Transportation Safety Board (PTSB) Reference Guide (PDF)**

Attachment containing the RFP's Additional Project Specific Information can be found on the NYSDOT project web site, located at <https://www.dot.ny.gov/business>. Click on "Consulting Services", then click on "Opportunities", and then click on the **date** to the left of "C038057 NYSDOT State Safety Oversight Program for Rail Transit Agencies".

### **Attachment 21: RFP Modifications**

Attachment 21, which contains the RFP's Modifications can be found on the NYSDOT project web site, located at <https://www.dot.ny.gov/business>. Click on "Consulting Services", then click on "Opportunities", and then click on the **date** to the left of "C038057 NYSDOT State Safety Oversight Program for Rail Transit Agencies".



## **ATTACHMENT 22 – LIST OF PAST & CURRENT CONTRACTS**

### Reporting for Special Conflict of Interest Restrictions

The State Safety Oversight Agency shall prohibit a party or entity from providing services to both the oversight agency (NYSDOT's PTSB) and the Niagara Frontier, New York City Transit, and/or Staten Island Railroad. Therefore, all Prime and Sub-Consultant proposers to this RFP must submit a list of contracts whereby they provided or are providing services, as a Prime or a Sub-Consultant, to Niagara Frontier, New York City Transit, and/or Staten Island Railroad for the calendar years of 2017-present. Prime and Sub-Consultants must include the contract completion date. If no such contracts for services were awarded during the referenced interval, please provide a statement attesting to such.

### Reporting for other Potential conflicts of Interest

Any other actual, potential or perceived conflict of interest, not previously addressed within this attachment, associated contractual documents, or the RFP, shall be determined at the sole discretion of NYSDOT. In addition, the Prime and Sub-consultant proposals shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or an appearance of impropriety (i.e. perceived conflict of interest), relating to other clients/customers of the Consultant or former or current employees of the State, in connection with the consultant's rendering services detailed in this RFP. If an actual, potential or preconceived conflict does or may exist, please describe how the proposer would eliminate or prevent such conflict. Indicate what procedures will be followed to detect, notify the State of, and resolve any such conflicts.

While NYSDOT reserves the right to exclude sub-consultants; notwithstanding, NYSDOT will review the relationship and may request additional information about the proposer's plan to avoid such actual, or appearance of a, Conflict of Interest(s).

The Contractor (Consultant) must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Joint Commission on Public Ethics, or its predecessor State entities (collectively, "the Commission"), and, if so, a brief description indicating how any matter before the Commission was resolved or whether it remains unresolved.